

CUSTOMS BULLETIN AND DECISIONS

Weekly Compilation of

Decisions, Rulings, Regulations, Notices, and Abstracts

Concerning Customs and Related Matters of the

U.S. Customs Service

U.S. Court of Appeals for the Federal Circuit

and

U.S. Court of International Trade

VOL. 30/31

JANUARY 2, 1997

NO. 52/1

This issue contains:

U.S. Customs Service

T.D. 96-86 Through 96-88

General Notices

U.S. Court of International Trade

Slip Op. 96-189 Through 96-194

Abstracted Decisions:

Classification: C96/142 and C96/143

NOTICE

The decisions, rulings, regulations, notices and abstracts which are published in the CUSTOMS BULLETIN are subject to correction for typographical or other printing errors. Users may notify the U.S. Customs Service, Office of Finance, Logistics Division, National Support Services Center, Washington, DC 20229, of any such errors in order that corrections may be made before the bound volumes are published.

**Please visit the U.S. Customs Web at:
<http://www.customs.ustreas.gov>**

U.S. Customs Service

Treasury Decisions

(T.D. 96-86)

SYNOPSIS OF DRAWBACK DECISIONS

The following are synopses of drawback contracts approved September 4, 1991, to October 17, 1996, inclusive, pursuant to Subpart C, Part 191, Customs Regulations; and an approval under Treasury Decision 84-49.

In the synopses below are listed for each drawback contract approved under 19 U.S.C. 1313(b), the name of the company, the specified articles on which drawback is authorized, the merchandise which will be used to manufacture or produce these articles, the factories where the work will be accomplished, the date the proposal was signed, the basis for determining payment, the Port Director to whom the contract was forwarded or approved by, and the date on which it was approved.

Dated: December 3, 1996.

WILLIAM G. ROSOFF,
Acting Director,
International Trade Compliance Division.

(A) Company: Advanced Refractory Technologies, Inc.

Articles: Titanium diboride

Merchandise: Boron carbide

Factory: Buffalo, NY

Proposal signed: June 13, 1996

Basis of claim: Appearing in

Contract forwarded to PD of Customs: Boston, October 3, 1996

(B) Company: Amoco Polymers, Inc. (successor to Amoco Performance Products, Inc.'s T.D. 94-82-B under 19 USC 1313(s))

Articles: Xydar thermoplastic/polymer

Merchandise: Biphenol; para-hydroxybenzoic acid (PHBA)

Factory: Augusta, GA

Proposal signed: May 31, 1996

Basis of claim: Used in

Contract forwarded to PD of Customs: Houston, August 27, 1996

(C) Company: Apollo Colors Inc.

Articles: Color concentrates

Merchandise: Dye intermediates, per T.D. 72-108(3)

Factory: Rockdale, IL

Proposal signed: March 28, 1996

Basis of claim: Used in

Contract forwarded to PD of Customs: New York, August 9, 1996

(D) Company: Ciba-Geigy Corp.

Articles: RT-201-D Cinquasia violet R; RT-887-D Cinquasia violet R

Merchandise: Crude quinaclidone, gamma [Rubicron Red Crude (TM)]

Factory: Newport, DE

Proposal signed: July 12, 1991

Basis of claim: Used in

Contract forwarded to RC of Customs: New York, September 4, 1991

(E) Company: Ciba-Geigy Corp.

Articles: Curacron®

Merchandise: Profenofos technical

Factory: McIntosh, AL

Proposal signed: February 6, 1996

Basis of claim: Appearing in

Contract forwarded to PD of Customs: New York, August 9, 1996

(F) Company: Ciba-Geigy Corp.

Articles: Dual® & Primagram®

Merchandise: Metolachlor

Factories: St. Joseph, MO; Greenville, MS; Webster City & Hampton, IA; Blytheville, AR

Proposal signed: March 29, 1996

Basis of claim: Appearing in

Contract forwarded to PD of Customs: New York, August 16, 1996

(G) Company: Ciba-Geigy Corp., Crop Protection Division

Articles: Maxim®4FS

Merchandise: Fludioxonil

Factory: Cordele, GA

Proposal signed: May 23, 1996

Basis of claim: Used in

Contract forwarded to PD of Customs: New York, August 27, 1996

(H) Company: CYRO Industries (a partnership)

Articles: Acrylic resin (pellets & sheets)

Merchandise: Methyl methacrylate

Factories: Sanford, ME; Wallingford, CT

Proposal signed: January 31, 1996

Basis of claim: Appearing in

Contract forwarded to PD of Customs: New York, August 23, 1996

(I) Company: Eastman Chemical Co. (successor to Eastman Kodak Co.'s T.D. 92-29-H under 19 USC 1313(s))

Articles: Eastobrite optical brightener (OB-1)

Merchandise: o-aminophenol

Factory: Kingsport, TN

Proposal signed: December 18, 1995

Basis of claim: Used in

Contract forwarded to PD of Customs: Boston, August 16, 1996

(J) Company: Eastman Kodak Co.

Articles: Film and paper support; sensitized photographic films and papers; finished sensitized photographic films and papers

Merchandise: Couplers

Factories: Rochester, NY; Windsor, CO

Proposal signed: June 26, 1996

Basis of claim: Appearing in

Contract forwarded to PD of Customs: Boston, August 16, 1996

(K) Company: Eltech Systems Corp.

Articles: Nickel foam/nickel for batteries; HEW-50 reticulated foam (rolls/drums) carbon coated, cut and/or slit

Merchandise: HEW-50 reticulated foam (rolls/drums) a/k/a polyurethane foam

Factories: Chardon, OH; Tuscumbia, AL

Proposal signed: June 14, 1996

Basis of claim: Used in

Contract forwarded to PD of Customs: New York, October 8, 1996

(L) Company: The B. F. Goodrich Co.

Articles: Vinyl chloride monomer (VCM)

Merchandise: Ethylene

Factory: LaPorte, TX

Proposal signed: January 3, 1996

Basis of claim: Used in

Contract forwarded to PD of Customs: Houston, July 29, 1996

(M) Company: Jame Fine Chemicals Inc.

Articles: CPPO (Bis(2,4,5 Trichloro-6-CarbopentoxyPhenyl)); Luma A

Merchandise: 3,5,6-trichlorosalicyclic acid

Factory: Bound Brook, NJ

Proposal signed: April 22, 1996

Basis of claim: Used in

Contract forwarded to PD of Customs: New York, October 11, 1996

(N) Company: Lonza, Inc.

Articles: Biotin 10

Merchandise: Biotin 5

Factory: Conshohocken, PA

Proposal signed: April 12, 1996

Basis of claim: Used in

Contract forwarded to PD of Customs: New York, October 4, 1996

(O) Company: Merrell Pharmaceuticals, Inc.

Articles: Terfenadine

Merchandise: Terfenadone base anhydrous; azacyclonol HCl & azacyclonol base

Factory: Midland, MI

Proposal signed: August 5, 1996

Basis of claim: Used in

Contract forwarded to PD of Customs: Houston, August 9, 1996

Revokes: Unpublished authorization of July 11, 1996 (Hoechst Marion Rousel Inc.)

(P) Company: Monsanto Co.

Articles: Carpet staple; tire yarn; no-shock fiber (conductive textile fiber); nylon 6,6 polymer (flake); dry adipic acid; dimethyladipate (DMA); dimethylglutarate (DMG); dimethylsuccinate (DMS); mixed dimethyl esters (mixtures of DMA, DMG and DMS)

Merchandise: Cyclohexane; cyclohexanone (K); cyclohexanol (A); cyclohexanol/cyclohexanone (KA)

Factories: Gonzales, FL; Greenwood, SC

Proposal signed: August 27, 1996

Basis of claim: Used in, with distribution to the products obtained in accordance with their relative values at the time of separation

Contract forwarded to PD of Customs: Chicago, September 11, 1996

Revokes: T.D. 91-67-N

(Q) Company: National Ink, Inc.

Articles: Marking, coloring & writing ink

Merchandise: Coal tar dyes; pigments

Factories: Santee, CA; Shelbyville, TN

Proposal signed: August 19, 1996

Basis of claim: Appearing in

Contract forwarded to PD of Customs: San Francisco, October 3, 1996

(R) Company: Optical Cable Corp.

Articles: Fiber optic cable

Merchandise: Optical fiber

Factory: Roanoke, VA

Proposal signed: March 1, 1996

Basis of claim: Used in

Contract forwarded to PD of Customs: San Francisco, July 30, 1996

Revokes: T.D. 95-70-S

(S) Company: Optical Cable Corp.

Articles: Fiber optic cable

Merchandise: Optical fiber 62.5 and 50 micron higher performance;
optical fiber 50 micron lower performance; optical fiber single-
mode matched clad; optical fiber singlemode depressed clad

Factory: Roanoke, VA

Proposal signed: March 1, 1996

Basis of claim: Used in

Contract forwarded to PD of Customs: San Francisco, October 1, 1996

(T) Company: OSi Specialties, Inc.

Articles: Polydimethylsiloxane surfactants: SILWET® L-7600, L7622,
L-77, L-77 AG, M, L-7602 and L-7607; UCARSIL® AF-1, A-1230

Merchandise: Polyoxyalkylene monoalkyl ether a/k/a Y-6044

Factory: Sistersville, WV

Proposal signed: May 28, 1996

Basis of claim: Used in

Contract forwarded to PD of Customs: Boston, August 22, 1996

(U) Company: OSi Specialties, Inc.

Articles: Organofunctional silanes: Y-4147, Y-9936 crude, Y-9936,
Y-4149, A-174, A-174J, UCARSIL PC-2A; UCARSIL PC-1A;
UCARSIL PC-75

Merchandise: Allyl methacrylate (AMA)

Factory: Sistersville, WV

Proposal signed: May 28, 1996

Basis of claim: Used in

Contract forwarded to PD of Customs: Boston, August 22, 1996

(V) Company: Rohm and Haas Co. (successor to Rohm and Haas Delaware Valley Inc.'s T.D. 79-259-U under 19 USC 1313(s))

Articles: Emulsions (Rhoplex & Primal); acryloid solution coatings; MR, GEL & acrylic anionic ion exchange resins; (mixed bed) ion exchange resins; adsorbents; Kelthane series; Karathane series; Stam series; TOK series; diphenylethers; surfactants-phosphates; surfactants-agricultural emulsifiers; Hyamine series; choline chloride series

Merchandise: Methyl alcohol

Factory: Philadelphia, PA

Proposal signed: May 30, 1996

Basis of claim: Used in

Contract forwarded to PD of Customs: Houston, August 20, 1996

(W) Company: Rohm & Haas Co. (successor to Rohm & Haas Delaware Valley, Inc.'s T.D. 96-26-T under 19 USC 1313(s))

Articles: Systhane 40W; Systhane 2E; Rally 40W; NOVA 40W

Merchandise: RH-3866 Crude

Factory: Philadelphia, PA

Proposal signed: July 10, 1996

Basis of claim: Appearing in

Contract forwarded to PD of Customs: Houston, August 30, 1996

(X) Company: Unitex Chemical Corp.

Articles: N-butyl benzene sulfonamide (Uniplex 214)

Merchandise: Benzene sulfonyl chloride

Factory: Greensboro, NC

Proposal signed: January 16, 1996

Basis of claim: Used in

Contract forwarded to PD of Customs: Miami, August 9, 1996

(Y) Company: Zeneca Inc.

Articles: Pro-Jet fast yellow 2 liquid

Merchandise: Pro-Jet fast yellow 2 stage presscake

Factory: New Castle, DE

Proposal signed: May 28, 1996

Basis of claim: Used in

Contract forwarded to PD of Customs: New York, August 16, 1996

(Z) Company: Zeneca Inc.

Articles: Pro-Jet fast magenta 2 liquid

Merchandise: Pro-Jet magenta 2 R.O. feed

Factory: New Castle, DE

Proposal signed: May 28, 1996

Basis of claim: Used in

Contract forwarded to PD of Customs: New York, October 17, 1996

APPROVAL UNDER T.D. 84-49

(1) Company: Basis Petroleum, Inc.

Articles: Petroleum products and petrochemical products

Merchandise: Crude petroleum and petroleum derivatives

Factories: Houston & Texas City, TX; Krotz Springs, LA

Proposal signed: July 30, 1996

Basis of claim: As provided in T.D. 84-49

Contract forwarded to PD of Customs: Houston, September 3, 1996

Revokes: T.D. 93-42(3) (Phibro Energy USA, Inc.)

* * * * *

Albaugh Chemical Corp. operating under T.D.s 92-59-A and 95-56-B has changed its name to Albaugh Inc.

Nippondenso Manufacturing U.S.A., Inc. operating under T.D. 93-86-P has changed its name to Denso Manufacturing Michigan, Inc.

The Upjohn Co., operating under T.D. 95-85-Z has changed its name to Pharmacia & Upjohn Co.

(T.D. 96-87)

DETERMINING TRANSACTION VALUE IN
MULTI-TIERED TRANSACTIONS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: The primary method of appraising imported merchandise is transaction value. Transaction value is the price actually paid or payable for imported merchandise when sold for exportation to the United States plus certain statutory additions. This notice clarifies some of the issues that arise in multi-tiered transactions in determining which is the sale for exportation to the United States for the purpose of determining transaction value. It also sets forth the documentation and information needed to support a ruling request that transaction value should be based on a sale involving a middleman and the manufacturer or other seller rather than on the sale in which the importer is a party.

DATES: All future ruling requests that in a multi-tiered arrangement transaction value is properly based on a sale not involving the importer must be supported by the evidence discussed in this notice.

FOR FURTHER INFORMATION CONTACT: Lorrie Rodbart, Office of Regulations and Rulings, Value Branch (202) 482-7010

SUPPLEMENTARY INFORMATION:

The primary method of appraising imported merchandise is transaction value. Section 402(b) of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (TAA; 19 U.S.C. § 1401a), provides that the transaction value of imported merchandise is the price actually paid or payable for the merchandise when **sold for exportation to the United States**, plus specified additions. Thus, in order for imported merchandise to be appraised under transaction value it must be the subject of a bona fide sale between the buyer and seller and it must be a sale for exportation to the United States.

In *Nissho Iwai American Corp. v. United States*, 982 F.2d 505 (Fed. Cir. 1992), the Court of Appeals for the Federal Circuit reviewed the standard for determining transaction value in a three-tiered distribution system involving a middleman. The Court indicated that a manufacturer's price for establishing transaction value is valid so long as the transaction between the manufacturer and the middleman falls within the statutory provision for valuation. In this regard, the Court stated that in a three-tiered distribution system:

The manufacturer's price constitutes a viable transaction value when the goods are clearly destined for export to the United States and when the manufacturer and the middleman deal with each other at arm's length, in the absence of any non-market influence that affect the legitimacy of the sale price * * * [T]hat determination can be made on a case-by-case basis.

Id. at 509. See also, *Synergy Sport International, Ltd. v. United States*, 17 C.I.T. ___, Slip Op. 93-5 (Ct. Int'l. Trade January 12, 1993).

After *Nissho Iwai*, Customs has received numerous ruling requests that transaction value is properly based on a sale which does not involve the importer, but rather a middleman and the manufacturer or other seller. In our rulings, we have stated that in fixing the appraisement of imported merchandise, Customs presumes that the price paid by the importer is the basis of transaction value and the burden is on the importer to rebut this presumption. In order to rebut this presumption, in accordance with the *Nissho Iwai* standard, the importer must prove that at the time the middleman purchased, or contracted to purchase, the goods were "clearly destined for export to the United States" and the manufacturer (or other seller) and middleman dealt with each other at "arm's length." In reaching a decision, Customs must ascertain whether the transaction in question falls within the statutory provision for valuation, *i.e.*, that it is a sale, that it is a sale for exportation to the United States in accordance with the standard set forth above, and that the parties dealt with each at "arm's length."¹ As stated in *Nissho Iwai*, these questions are determined case-by-case based on the evidence presented.

¹ Detailed information regarding bona fide sales and sales for exportation is contained in the Informed Compliance Publication, *What Every Member of the Trade Community Should Know About: Bona Fide Sales and Sales for Exportation*, November, 1996.

In order for an importer to rebut the presumption discussed above, certain information and documentation must be provided. Specifically, the requestor must describe in detail the roles of all the various parties and furnish relevant documents pertaining to each transaction that was involved in the exportation of the merchandise to the United States. If there is more than one possible sale for exportation, information and documentation about each of them should be provided.² Relevant documents include, purchase orders, invoices, proof of payment, contracts and any additional documents (e.g. correspondence) which demonstrate how the parties dealt with one another and which support the claim that the merchandise was clearly destined to the United States. If any of these documents do not exist, or exist but are not available, the ruling request should so provide. What we are looking for is a complete paper trail of the imported merchandise showing the structure of the entire transaction.³ If the request covers many importations, it is acceptable to submit documents pertaining to some of the importations provided complete sets of documents are furnished, the underlying circumstances are the same, and the documents are representative of the documents used in all the transactions. Any differences should be explained.

In addition, to establish whether the transaction is "at arm's length" the ruling request must state the relationship, if any, of the parties. In general, Customs will consider a sale between unrelated parties to have been conducted at "arm's length." If the parties to the requested transaction are not related as defined in 19 U.S.C. 1401a(g), then a statement to that effect should be made. However, if the parties to the requested transaction are related, then it is necessary to provide Customs with information which demonstrates that transaction value may be based on the related party sale as provided in 19 U.S.C. 1401a(b)(2)(B). (*i.e.*, that the circumstances of sale indicate that the relationship did not influence the price or that the transaction value closely approximates certain test values). For further information regarding related party transactions see *Transfer Pricing; Related Party Transactions*, 58 Fed. Reg. 5445, January 21, 1993.

Also, in order for a particular transaction to be a viable transaction value there must be sufficient information available with respect to the amounts, if any, of the statutory additions set forth in 19 U.S.C. 1401a(b)(1) (*i.e.*, packing costs, selling commissions, assists, royalty or license fees, and proceeds of any subsequent sale). The statute provides

² For example, if the importer is trying to prove that a transaction between a middleman and the manufacturer is a viable transaction value, it should describe the role of all the parties (*i.e.*, the importer, the middleman and the manufacturer) and furnish evidence regarding both the alleged sale between the importer and the middleman and the alleged sale between the middleman and the manufacturer. The evidence must show that the middleman purchased the goods from the manufacturer and that the goods were clearly destined to the United States.

³ An example of a complete paper trail is documentation which shows that: 1) the importer ordered 100 Style A hair driers at \$6 each from the middleman on January 5, 1996 listing the required specifications; 2) the middleman ordered 100 Style A hair driers at \$6 each from the manufacturer listing the importer's specifications on January 10, 1996; 3) the manufacturer shipped 100 Style A hair driers to the importer on February 10, 1996; the packing list shows that these goods are made to the importer's specifications; 4) on February 12, 1996, the middleman billed the importer \$600 for 100 style A hair driers and the importer paid this amount by check; and 5) on February 13, 1996, the manufacturer billed the middleman \$500 for 100 style A hair driers and the middleman paid this amount by check.

that if sufficient information is not available, for any reason, with respect to any of these amounts, the transaction value of the imported merchandise concerned shall be treated as one that cannot be determined. Therefore, in order to determine whether a particular transaction may be the basis for transaction value, the requestor must provide Customs with sufficient information regarding the amounts, if any, of the statutory additions set forth in 19 U.S.C. 1401a(b)(1). For example, if the importer claims that transaction value should be based on the sale between the middleman and the manufacturer, the importer must inform Customs whether the middleman provided any assists to the manufacturer and if so, the value of the assists and how the value was determined. If the importer does not have this information, transaction value cannot be based on this sale.

Finally, Customs decisions will be based on the evidence presented when the ruling request is submitted. Although we would not be precluded from asking for additional information, this will not be done routinely. If insufficient evidence is provided, the claim will be denied.

In summary, the public should be aware that Customs presumes that transaction value is based on the price paid by the importer and in order to rebut this presumption and prove that transaction value should be based on some other price, complete details of all the relevant transactions and documentation (including purchase orders, invoices, evidence of payment, contracts and other relevant documents) must be provided, including the relationship of the parties and sufficient information regarding the statutory additions. Customs rulings will be based on the evidence submitted with the request.

Dated: December 13, 1996.

STUART P. SEIDEL,
Assistant Commissioner,
Office of Regulations and Rulings.

(T.D. 96-88)

RECORDATION OF TRADE NAME: "A. J. & W. INCORPORATED"**AGENCY:** U.S. Customs Service, Department of the Treasury.**ACTION:** Notice of recordation.

SUMMARY: On September 12, 1996, a notice of application for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "A. J. & W. Incorporated," was published in the Federal Register (61 FR 48206). The notice advised that before final action was taken on the application, consideration would be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation and received not later than November 2, 1996. No responses were received in opposition to the notice. Accordingly, as provided in section 133.14, Customs Regulations (19 CFR 133.14), the name "A. J. & W. INCORPORATED," is recorded as the trade name used by A. J. & W. Incorporated, a corporation organized under the laws of Hawaii, located at 565 Kokea Street, Building G2- 4, Honolulu, Hawaii 96817. The trade name is used in connection with towels, footwears, bags, luggage, mugs, straw beach mats, kitchen accessory set, luggage accessories, jewelry bags, ornamental wood stands, bath gift sets, pua shell souvenir line, fans, ashtrays and general souvenir items.

EFFECTIVE DATE: December 23, 1996.

FOR FURTHER INFORMATION CONTACT: Delois P. Johnson, Intellectual Property Rights Branch, 1301 Constitution Avenue, NW, (Franklin Court), Washington, D.C. 20229 (202 482-6960).

Dated: December 17, 1996.

JOHN F. ATWOOD,

*Chief,**Intellectual Property Rights Branch.*

[Published in the Federal Register, December 23, 1996 (61 FR 67594)]

1907

1907

1907

1907

1907

1907

1907

1907

1907

1907

1907

1907

1907

1907

1907

1907

1907

1907

1907

1907

1907

1907

1907

1907

1907

1907

1907

1907

1907

1907

1907

1907

1907

1907

1907

1907

1907

1907

1907

1907

1907

1907

1907

1907

1907

1907

1907

1907

1907

1907

U.S. Customs Service

General Notices

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, December 18, 1996.

SUBJECT: INFORMED COMPLIANCE PUBLICATIONS

The philosophies of "informed compliance" and "shared responsibility" permeate the Customs modernization portion of the North American Free Trade Agreement Implementation Act (Title VI of Pub. Law 103-182). These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. In recognition of the complexity of importing and the value of adequate and timely information concerning importers' rights and obligations, the Customs Service has undertaken to provide the public with relevant information concerning its rights and responsibilities under Customs and related laws in a variety of formats. It is hoped that these efforts will assist the public in meeting its responsibility of using reasonable care to enter, classify and value imported merchandise.

During 1996, the Customs Service developed and released its "Informed Compliance Strategy." This Strategy identifies my office as "Customs principal provider of technical information" and indicates that "distribution of such information, intended to assist the trade in exercising reasonable care, will be made through numerous channels in a variety of media." In support of Customs Informed Compliance Strategy, my office produces and posts electronic copies of informed compliance publications on the Customs Electronic Bulletin Board (CEBB) and on the Customs World Wide Web site. To assist users of these publications and in response to numerous requests for printed copies, we are reproducing in this Customs Bulletin copies of the informed compliance publications in the "What Every Member of the Trade Community Should Know About: * * *" series that have been or will be posted shortly on our CEBB and Web site.

The topics addressed by these publications are:

Customs Value
Buying and Selling Commissions
Bona Fide Sales and Sales for Exportation
NAFTA for Textiles and Textile Articles

Textile & Apparel Rules of Origin

Fibers and Yarn

Raw Cotton: Tariff Classification and Import Quotas

Marble

Mushrooms

Peanuts

Both the CEEB and the Customs Web site were established to provide interested parties with free, current, and relevant information regarding Customs operations and items of special interest. Included are proposed regulations, Customs publications and notices, rulings, and news releases.

Access to the CEEB requires a PC, a modem, and a communications package set as an ANSI terminal with databits set to 8, stopbits set to 1, and parity set to None. The phone number to log on to the CEEB is (703) 440-6155. Questions regarding the CEEB should be addressed to the CEEB Administrator at (703) 440-6236. Users of the Internet's World Wide Web (WWW) may access Customs Web site 24-hours per day at <http://www.customs.ustreas.gov>.

STUART P. SEIDEL,
*Assistant Commissioner,
Office of Regulations and Rulings.*

What Every Member of the
Trade Community Should Know About:

Customs Value



A Basic Level
Informed Compliance Publication of the
U.S. Customs Service

May, 1996

INTRODUCTION

On December 8, 1993, Title VI of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), which is also known as the Customs Modernization Act or "Mod Act," became effective. These provisions amended many sections of the Tariff Act of 1930 and related laws. Two new concepts which emerge from the Mod Act are "*informed compliance*" and "*shared responsibility*." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the Mod Act imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act, as amended, (19 U.S.C. § 1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met. The Customs Service is then responsible for fixing the final classification and value of the merchandise. The failure of an importer of record to exercise reasonable care may lead to delay in the release of merchandise or the imposition of penalties.

My office has been given a major role in meeting Customs informed compliance responsibilities. In order to provide information to the public, Customs intends to issue a series of informed compliance publications, and possibly cd-roms and videos, on topics such as value, classification, entry procedures, determination of country of origin, marking requirements, intellectual property rights, record-keeping, drawback, penalties and liquidated damages.

The Value Branch in the International Trade Compliance Division of the Office of Regulations and Rulings has prepared this publication on **Customs Value**, as the first in the series. It is hoped that this material, together with seminars and increased access to Customs rulings, will help the trade community in improving voluntary compliance with the Customs laws.

The information provided in this publication is for general information purposes only. Recognizing that many complicated factors may be involved in customs valuation issues, an importer may wish to obtain a ruling under Customs Regulations, 19 C.F.R. § 177, or obtain advice from an expert (such as a licensed Customs Broker, attorney or consultant) who specializes in Customs valuation. Reliance solely on the general information in this pamphlet may not be considered reasonable care.

Comments and suggestions are welcomed, and should be addressed to me at the Office of Regulations and Rulings, U.S. Customs Service, 1301 Constitution Avenue, NW (Franklin Ct. Bldg), Washington, DC 20229.

STUART P. SEIDEL,
Assistant Commissioner,
Office of Regulations and Rulings.

TABLE OF CONTENTS

How is imported merchandise appraised?	Customs Value-18
What is Transaction Value?	Customs Value-18
What is the Price Actually Paid or Payable?	Customs Value-18
What are Packing Costs?	Customs Value-19
What are Selling Commissions?	Customs Value-19
What is an Assist?	Customs Value-19
What is a Royalty or License Fee?	Customs Value-19
What are Proceeds?	Customs Value-19
Are any amounts <i>excluded</i> from Transaction Value?	Customs Value-20
Are there any <i>limitations</i> on the use of Transaction Value?	Customs Value-20
When is Transaction Value " <i>acceptable</i> " in related-party transactions?	Customs Value-20
What is an "assist"?	Customs Value-21
How is the <i>value</i> of an assist determined?	Customs Value-21
How is the value of an assist <i>apportioned</i> ?	Customs Value-22
What if the imported merchandise cannot be appraised on the basis of Transaction Value ?	Customs Value-23
What is the Transaction Value Of Identical Merchandise?	Customs Value-23
What is the Transaction Value of Similar Merchandise?	Customs Value-23
What is Deductive Value?	Customs Value-23
What <i>deductions</i> can be made?	Customs Value-24
Can a deduction be made for both commissions and profits?	Customs Value-24
What is Computed Value?	Customs Value-24
What is the Value If Other Values Cannot Be Determined?	Customs Value-24
What is the importer of record's obligation to provide information to Customs ?	Customs Value-24
What records must be kept?	Customs Value-25
Further Information	Customs Value-25

WHAT EVERY MEMBER OF THE TRADE COMMUNITY SHOULD KNOW ABOUT: CUSTOMS VALUE

HOW IS IMPORTED MERCHANDISE APPRAISED?

All merchandise imported into the United States is subject to appraisal. The Trade Agreements Act of 1979 (the Act) sets forth the rules for appraisal of imported merchandise. The Act sets forth six different methods of appraisal, and their order of preference. Under the Act, the preferred method of appraisal is **transaction value**. Generally, the appraised value of all merchandise imported into the United States is the transaction value of the goods. In the event the merchandise cannot be appraised on the basis of transaction value, the secondary bases are considered in the following order:

- Transaction Value of Identical Merchandise
- Transaction Value of Similar Merchandise
- Deductive Value
- Computed Value
- Values if Other Values Cannot be Determined

The importer may request the reversal of Deductive Value and Computed Value at the time the entry summary is filed.

WHAT IS TRANSACTION VALUE?

The transaction value of imported merchandise is the price actually paid or payable for the merchandise when sold for exportation to the United States, plus amounts equal to:

- A. The packing costs incurred by the buyer.
- B. Any selling commission incurred by the buyer.
- C. The value, apportioned as appropriate, of any assist.
- D. Any royalty or license fee that the buyer is required to pay, directly or indirectly, as a condition of the sale.
- E. The proceeds of any subsequent resale, disposal, or use of the imported merchandise that accrue, directly or indirectly, to the seller.

These amounts (items A through E) are added only to the extent that each 1) is not included in the price, and 2) is based on information accurately establishing the amount. If sufficient information is not available, then the transaction value cannot be determined and the next basis of appraisal, in order of precedence, must be considered.

WHAT IS THE PRICE ACTUALLY PAID OR PAYABLE?

The price actually paid or payable for the imported merchandise is the **total payment**, excluding international freight, insurance, and other C.I.F. charges, that the buyer makes to the seller. This payment may be direct or indirect. Some examples of an indirect payment are when the buyer settles all or part of a debt owed by the seller, or when the seller to settle a debt he owes the buyer reduces the price on a current importation. Such indirect payments are part of the transaction value.

EXAMPLE:

X Company in Dayton, Ohio pays \$2,000 to Y's Toy Factory in Paris, France for a shipment of toys. The \$2,000 consists of \$1,850 for the toys and \$150 for ocean freight and insurance. Y's Toy Factory would have charged X Company \$2,200 for the toys; however, since Y's Toy Factory owed X Company \$350, Y's Toy Factory only charged \$1,850 for this particular shipment of toys. Assuming the transaction is acceptable, what is the transaction value?

The transaction value of the imported merchandise is \$2,200, that is, the sum of the \$1,850 plus the \$350 indirect payment. Because the transaction value excludes C.I.F. charges, the \$150 ocean freight and insurance charge is excluded.

However, if a buyer performs an activity on his own account, other than those listed in the foregoing A through E, then the activity is not considered an indirect payment to the seller, and is not part of the transaction value. This applies even though the buyer's activity might be regarded as benefitting the seller. One example of such activity is advertising.

WHAT ARE PACKING COSTS?

Packing costs means the cost of all containers and coverings of whatever nature and of packing, whether for labor or materials, used in placing merchandise in condition, packed ready for shipment to the United States.

WHAT ARE SELLING COMMISSIONS?

Selling commission means any commission paid to the seller's agent, who is related to or controlled by, or works for or on behalf of, the manufacturer or the seller.

WHAT IS AN ASSIST?

The apportioned value of any assist constitutes part of the transaction value of the imported merchandise. First the value of the assist is determined; then the value is pro-rated to the imported merchandise. (See below for further discussion of assists)

WHAT IS A ROYALTY OR LICENSE FEE?

Royalty or license fees that a buyer must pay, directly or indirectly, as a condition of the sale of the imported merchandise for exportation to the United States will be included in the transaction value. Ultimately whether a royalty or license fee is dutiable will depend on 1) whether the buyer had to pay them as a condition of the sale and b) to whom and under what circumstances they were paid. The dutiability status will have to be decided on a case-by-case basis.

WHAT ARE PROCEEDS?

Any proceeds resulting from the subsequent sale, disposal, or use of the imported merchandise that accrue directly or indirectly to the seller are dutiable.

ARE ANY AMOUNTS *EXCLUDED* FROM TRANSACTION VALUE?¹

Yes. The amounts to be excluded from transaction value are:

1. The cost, charges, or expenses incurred for transportation, insurance, and related services incident to the international shipment of the goods from the country of exportation to the place of importation in the United States.
2. If identified separately, any reasonable cost or charge incurred for:
Constructing, erecting, assembling, maintaining, or providing technical assistance with respect to the goods after importation into the United States, or
Transporting the goods after importation.
3. The customs duties and other Federal taxes, including any Federal excise tax for which sellers in the United States are ordinarily liable.

ARE THERE ANY *LIMITATIONS* ON THE USE OF TRANSACTION VALUE?

Yes, if any of these limitations are present, then transaction value cannot be used as the appraised value, and the next basis of value will be considered. The limitations can be divided into four groups:

1. Restrictions on the disposition or use of the merchandise.
2. Conditions for which a value cannot be determined.
3. Proceeds of any subsequent resale, disposal or use of the merchandise, accruing to the seller, for which an appropriate adjustment to transaction value cannot be made.
4. Related-party transactions where the transaction value is not acceptable.

**WHEN IS TRANSACTION VALUE "*ACCEPTABLE*" IN
RELATED-PARTY TRANSACTIONS?**

The term "acceptable" means that the relationship between the buyer and seller did not influence the price actually paid or payable. Examining the circumstances of sale will help make this determination.

Alternatively "acceptable" can also mean that the transaction value of the imported merchandise closely approximates any one of the following test values, provided these values relate to merchandise exported to the United States at or about the same time as the imported merchandise:

1. The transaction value of identical merchandise, or of similar merchandise, in sales to unrelated buyers in the United States.
2. The deductive value or computed value for identical merchandise or similar merchandise.

The test values are used for comparison only. They do not form a substitute basis of valuation.

¹The May 1996 revision deletes any references to decreases in prices paid after importation to avoid any misunderstanding.

In determining if the transaction value is close to one of the foregoing test values, an adjustment is made if the sales involved differ in:

Commercial levels

Quantity levels

The costs, commissions, values, fees, and proceeds described in A through E as additions to the price actually paid or payable

The costs incurred by the seller in sales in which he and the buyer are not related that are not incurred by the seller in sales in which he and the buyer are related

Questions concerning related parties require a detailed analysis of the transaction and should be reviewed carefully by persons with expertise in the application of the value law.

I NEED TO KNOW MORE ABOUT "ASSISTS."

WHAT IS AN "ASSIST?"

An assist is any of the items listed below that the buyer of imported merchandise provides directly or indirectly, free of charge or at a reduced cost, for use in the production or sale of merchandise for export to the United States.

Materials, components, parts, and similar items incorporated in the imported merchandise.

Tools, dies, molds, and similar items used in producing the imported merchandise.

Merchandise consumed in producing the imported merchandise.

Engineering, development, artwork, design work, and plans and sketches that are undertaken outside the United States and are necessary for the production of the imported merchandise. "Engineering, development, * * *" etc. will not be treated as an assist if the service or work is 1) performed by a person domiciled within the United States, 2) performed while that person is acting as an employee or agent of the buyer of the imported merchandise, and 3) incidental to other engineering, development, artwork, design work, or plans or sketches undertaken within the United States.

HOW IS THE VALUE OF AN ASSIST DETERMINED?

In determining the value of an assist, the following rules apply:

1. The value is either a) the cost of acquiring the assist, if acquired by the importer from an unrelated seller, or b) the cost of producing the assist, if produced by the importer or a person related to the importer.
2. The value includes the cost of transporting the assist to the place of production.
3. The value of assists used in producing the imported merchandise is adjusted to reflect use, repairs, modifications, or other factors affecting the value of the assists. Assists of this type include such items as tools, dies, and molds.

EXAMPLE:

If the importer previously used the assist, regardless of whether he acquired or produced it, the original cost of acquisition or of pro-

duction must be decreased to reflect the use. Alternatively repairs and modifications may result in the value of the assist having to be adjusted upwards.

4. In the case of engineering, development, artwork, design work, and plans and sketches undertaken elsewhere than in the United States, the value is a) the cost of obtaining copies of the assist, if the assist is available in the public domain; b) the cost of the purchase or lease if the assist was bought or leased by the buyer from an unrelated person; c) the value added outside the United States, if the assist was produced in the United States and one or more foreign countries.

So far as possible, the buyer's commercial record system is used to determine the value of an assist, especially such assists as engineering, development, artwork, design work, and plans and sketches undertaken elsewhere than in the United States.

EXAMPLE:

A U.S. buyer supplied detailed designs to the foreign producer. These designs were necessary to manufacture the imported merchandise. The U.S. importer bought the U.S. produced designs from an engineering company in the U.S. for submission to his foreign supplier. Should the appraised value of the merchandise include the value of the assist?

No, design work undertaken in the U.S. may not be added to the price actually paid or payable.

EXAMPLE:

A U.S. buyer purchases merchandise from a foreign producer. The price actually paid or payable includes the cost of U.S. design incorporated in the merchandise. Is there any authority to deduct the cost of the U.S. design from the price actually paid or payable?

No authority exists to deduct such costs from the price actually paid or payable.

EXAMPLE:

A U.S. buyer supplied molds free of charge to the foreign seller. The molds were necessary to manufacture merchandise for the U.S. importer. The U.S. importer had some of the molds manufactured by a U.S. company and others manufactured in a third country. Should the appraised value of the merchandise include the value of the molds?

Yes. It is an addition required to be made to transaction value.

HOW IS THE VALUE OF AN ASSIST APPORTIONED?

Having determined the value of an assist, the next step is to apportion that value to the imported merchandise. The apportionment is done reasonably and according to generally accepted accounting principles. By the latter is meant any generally recognized consensus or substan-

tial authoritative support regarding the recording and measuring of assets and liabilities and changes therein, the disclosing of information, and the preparing of financial statements.

The method used to apportion the value of the assist depends on the details. For example, suppose the entire anticipated production using the assist is to be exported to the United States. Then the value of the assist could be pro-rated any one of several ways: over the first shipment if the importer wants to pay duty on the entire value at one time, over the number of units produced up to the time of the first shipment, or over the entire anticipated production. If the entire anticipated production is not destined for the United States, some other method of apportionment will be used that is consistent with generally accepted accounting principles.

WHAT IF THE IMPORTED MERCHANDISE CANNOT BE APPRAISED ON THE BASIS OF TRANSACTION VALUE?

The imported merchandise will be appraised in the order listed at the beginning of this pamphlet.

WHAT IS THE TRANSACTION VALUE OF IDENTICAL MERCHANDISE?

When the transaction value cannot be determined, then the customs value of the imported goods being appraised is the transaction value of identical merchandise. The value of the identical merchandise must be a previously accepted customs value.

WHAT IS THE TRANSACTION VALUE OF SIMILAR MERCHANDISE?

If merchandise identical to the imported goods cannot be found or an acceptable transaction value for such merchandise does not exist, then the customs value is the transaction value of similar merchandise. The value of the similar merchandise must be a previously accepted customs value.

WHAT IS DEDUCTIVE VALUE?

If the transaction value of imported merchandise, of identical merchandise, or of similar merchandise cannot be determined, then deductive value is calculated for the merchandise being appraised. Deductive value is the next basis of appraisement at the time the entry summary is filed, to be used unless the importer designates computed value as the preferred method of appraisement. If computed value was chosen and subsequently determined not to exist for customs valuation purposes, then the basis of appraisement reverts to deductive value.

If an assist is involved in a sale, that sale cannot be used in determining deductive value. So any sale to a person who supplies an assist for use in connection with the production or sale for export of the merchandise concerned is disregarded for purposes of determining deductive value.

Basically, deductive value is the resale price in the United States after importation of the goods, with deductions for certain items. Generally, the deductive value is calculated by starting with a unit price and making certain additions to and deductions from that price.

WHAT DEDUCTIONS CAN BE MADE?

Certain items are not part of deductive value and must be deducted from the unit price. These items are as follows:

1. Commissions usually paid or the addition usually made for profit and general expenses, in connection with sales in the U.S. of imported merchandise of the same class or kind as the merchandise concerned
2. Transportation/Insurance Costs
3. Customs Duties/Federal Taxes
4. Value of Further Processing (used only when the merchandise is not sold in the condition as imported)

CAN A DEDUCTION BE MADE FOR BOTH COMMISSIONS AND PROFITS?

No, the unit price is reduced by either a commission paid or the addition usually made for profit and general expenses.

WHAT IS COMPUTED VALUE?

The next basis of appraisement is computed value. If customs valuation cannot be based on any of the values previously discussed, then computed value is considered. This value is also the one the importer can select to precede deductive value as a basis of appraisement.

Computed value consists of the sum of the following items:

1. Materials, fabrication, and other processing used in producing the imported merchandise
2. Profit and general expenses
3. Any assist, if not included in items 1 and 2
4. Packing costs

WHAT IS THE VALUE IF OTHER VALUES CANNOT BE DETERMINED?

If none of the previous five values can be used to appraise the imported merchandise, then the customs value must be based on a value derived from one of the five previous methods, reasonably adjusted as necessary. The value so determined should be based, to the greatest extent possible, on previously determined values. Only data available in the United States is to be used.

WHAT IS THE IMPORTER OF RECORD'S OBLIGATION TO PROVIDE INFORMATION TO CUSTOMS?

The Mod Act requires the importer of record, or authorized agent, to complete an entry by filing with Customs the declared value of the merchandise, and other documentation and information as is necessary to enable Customs to properly assess duties on the imported merchandise. The Mod Act requires the importer of record to use reasonable care in filing the information with Customs.

Customs Form 7501, the entry summary, requires that the importer of record or authorized agent declare that to the best of the declarant's knowledge, the entry fully discloses the true prices, values, quantities, rebates, drawbacks, fees, commissions and royalties, and is true and correct, and that all goods or services provided to the seller of the mer-

chandise either free or at reduced cost are fully disclosed. In order for an importer to ensure that the value information provided to Customs is complete, it may be necessary for an importer to coordinate with all relevant corporate departments, such as research and development, contracting and shipping (traffic). Failure to do so might be considered a failure to exercise reasonable care, and may lead to delays in releasing your merchandise or to the imposition of penalties.

WHAT RECORDS MUST BE KEPT?

The Tariff Act requires any owner, importer, consignee, importer of record, entry filer or other party who imports merchandise into the U.S. to make, keep and render for examination and inspection, records which pertain to the importation of the merchandise and are normally kept in the ordinary course of business, for a period of time not to exceed five years, from the date of entry. The term "records" includes electronic data. These records would include purchase orders, payment information, shipping records, ledgers, research and development records, etc. In addition, certain records, required for the entry of merchandise must be produced upon demand by Customs. Failure to produce required entry records could lead to delays in release of your merchandise or to the imposition of penalties.

FURTHER INFORMATION

Customs Valuation under the Trade Agreements Act of 1979 is a 96-page book providing extensive detail on the appraisement methods described in this pamphlet. The book contains a detailed narrative description of the customs valuation system, the customs valuation title of the Trade Agreements Act (§ 402 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (19 U.S.C. § 1401a)), the Statement of Administrative Action which was sent to the U.S. Congress in conjunction with the Act, regulations (19 C.F.R. §§ 152.100-152.108) implementing the valuation system (a few sections of the regulations have been amended subsequent to the publication of the book) and questions and answers concerning the valuation system. A copy may be obtained from the U.S. Customs Service, Office of Regulations and Rulings, Value Branch, 1301 Constitution Ave NW, Washington, D.C. 20229.

Customs Valuation Encyclopedia (with updates) is comprised of relevant statutory provisions, Customs Regulations implementing the statute, portions of the Customs Valuation Code, judicial precedent, and administrative rulings involving application of valuation law. A copy may be purchased for a nominal charge from the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250-7054.

The Customs Electronic Bulletin Board (CEBB) is an automated system which provides the entire trade community with current, relevant information regarding Customs operations and items of special interest. It was established as another effort to promote the Customs Service

as "trade friendly" within the importing and exporting community. The CEBB posts timely information including proposed regulations, news releases, Customs publications and notices, etc. which may be "downloaded" to your own PC. The Customs Service does not charge the public to use the CEBB. You only pay telephone charges. To use the CEBB, you must have a personal computer with a modem. The CEBB supports modem speeds from 2400 to 14,400 baud. Set up your terminal as ANSI, set databits to 8, set parity to N and stopbits to 1. Dial (703)440-6155 and log on with your name and choose a password. After a few questions, you are set to get up-to-date information from Customs. If you have any questions about the CEBB, call (703) 440-6236.

Additional information may be obtained from Customs ports of entry. Please consult your telephone directory for a Customs office near you. The listing will be found under U.S. Government, Treasury Department.

The information provided in this publication is basic and is for general information purposes only. Recognizing that many complicated factors may be involved in customs valuation issues, an importer may wish to obtain a ruling under Customs Regulations, 19 C.F.R. § 177, or obtain advice from an expert (such as a licensed Customs Broker, attorney or consultant) who specializes in Customs valuation. Reliance solely on the general information in this pamphlet may not be considered reasonable care.

What Every Member of the
Trade Community Should Know About:

Buying and Selling Commissions



An Advanced Level
Informed Compliance Publication of the
U.S. Customs Service

June, 1996

INTRODUCTION

On December 8, 1993, Title VI of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), which is also known as the Customs Modernization Act or "Mod Act," became effective. These provisions amended many sections of the Tariff Act of 1930 and related laws. Two new concepts which emerge from the Mod Act are "*informed compliance*" and "*shared responsibility*." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the Mod Act imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act, as amended, (19 U.S.C. § 1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met. The Customs Service is then responsible for fixing the final classification and value of the merchandise. The failure of an importer of record to exercise reasonable care may lead to delay in the release of merchandise or the imposition of penalties.

My office has been given a major role in meeting Customs informed compliance responsibilities. In order to provide information to the public, Customs intends to issue a series of informed compliance publications, and possibly cd-roms and videos, on topics such as value, classification, entry procedures, determination of country of origin, marking requirements, intellectual property rights, record-keeping, drawback, penalties and liquidated damages.

The Value Branch in the International Trade Compliance Division of the Office of Regulations and Rulings has prepared this publication on *Buying and Selling Commissions*, as part of a series of informed compliance publications regarding the appraisement of merchandise. It is hoped that this material, together with seminars and increased access to Customs rulings, will help the trade community in improving voluntary compliance with the Customs laws.

The information provided in this publication is for general information purposes only. Recognizing that many complicated factors may be involved in customs valuation issues, an importer may wish to obtain a ruling under Customs Regulations, 19 C.F.R. Part 177, or obtain advice from an expert (such as a licensed Customs Broker, attorney or consultant) who specializes in Customs valuation. Reliance solely on the general information in this pamphlet may not be considered reasonable care.

Comments and suggestions are welcomed, and should be addressed to me at the Office of Regulations and Rulings, U.S. Customs Service, 1301 Constitution Avenue, NW (Franklin Ct. Bldg), Washington, DC 20229.

STUART P. SEIDEL,
Assistant Commissioner,
Office of Regulations and Rulings.

TABLE OF CONTENTS

How is imported merchandise appraised?	30
What is transaction value?	30
How does the role of an intermediary affect transaction value? ..	30
What is the difference between buying and selling commissions?	30
How are buying and selling commissions treated under the TAA?	31
When are buying commissions included in transaction value? ..	31
What are some examples of services which are often provided by buying agents?	31
When is the intermediary a <i>bona fide</i> buying agent?	32
What are some indications that the intermediary is not a <i>bona fide</i> buying agent but rather an independent seller?	33
What is the significance of a buying agency agreement or the absence of such an agreement?	33
What if the seller and the intermediary are related?	34
Who has the burden of proof to establish the existence of a <i>bona</i> <i>fide</i> buying agency?	34
How should buying commissions be shown on the commercial documents?	34
What documentary evidence is needed to prove the existence of a <i>bona fide</i> buying agency?	34
What happens if the importer does not prove the existence of a <i>bona fide</i> buying agency?	35
When is the intermediary a selling agency?	35
Does an importer have an obligation to report commissions to Customs upon entry of the merchandise?	36
Additional Information	36

WHAT EVERY MEMBER OF THE TRADE COMMUNITY SHOULD KNOW ABOUT: BUYING AND SELLING COMMISSIONS

HOW IS IMPORTED MERCHANDISE APPRAISED?

All merchandise imported into the United States is subject to appraisal. The Trade Agreements Act of 1979 ("TAA") sets forth the rules for appraisal of imported merchandise. The preferred method of appraisal under the TAA is **transaction value**.

WHAT IS TRANSACTION VALUE?

The transaction value of imported merchandise is the price actually paid or payable for merchandise when sold for exportation to the United States, plus certain statutorily enumerated additions. For further information see the informed compliance publication "*Customs Value*", May, 1996.

HOW DOES THE ROLE OF AN INTERMEDIARY AFFECT TRANSACTION VALUE?

Many import transactions involve a party (or parties) who is neither the seller nor the buyer but an intermediary who assists either the buyer or seller in the purchase or sale of the imported merchandise. Identifying the role of the intermediary is important in determining the transaction value of the imported merchandise. An intermediary may function as either a buying or selling agent or as an independent buyer/seller. When the intermediary is functioning as an agent, the actual sale is between the foreign seller and the buyer with the agent acting as a facilitator. In such case, the issue to be decided is whether the commissions the agent receives for its services are part of the transaction value of the imported merchandise. This informed compliance publication explains the differences between buying and selling agents, buying and selling commissions, and the ramifications of each for appraisal purposes.

When the intermediary is functioning as an independent buyer/seller, the issue to be decided is which sale is the sale for exportation for purposes of transaction value (the sale between the manufacturer/seller and the intermediary or the sale between the intermediary and the importer/buyer). The criteria used to determine whether the intermediary is functioning as an independent buyer/seller and if so, which is the sale for exportation is the subject of the informed compliance publication, "*Bona Fide Sales and Sales for Exportation*".

WHAT IS THE DIFFERENCE BETWEEN BUYING AND SELLING COMMISSIONS?

In legal terms, in an agency relationship, one party is called the agent and the other party, the principal. An agent is a person who performs actions on behalf of the principal. The fees the agent receives for its services are called commissions. Typically, the commission is equal to an agreed upon percentage of the price of the goods. In a buying agency, the

principal is the buyer and in a selling agency, the principal is the seller. Buying commissions are fees paid to a *bona fide* buying agent for the services it performs on behalf of the buyer in connection with the purchase of the imported goods. Selling commissions are fees paid to a selling agent for the services it performs on behalf of the seller in the sale of the imported goods. It is important to note that when the intermediary is acting as an agent, it is not the actual buyer or the actual seller of the imported goods but rather, a party who is performing services on behalf of either the buyer or the seller.

HOW ARE BUYING AND SELLING COMMISSIONS TREATED UNDER THE TAA?

Selling commissions incurred by the buyer with respect to the imported merchandise are one of the specified additions to the price actually paid or payable. An addition is to be made for such selling commissions unless they are already included in the price. (For example, if the seller pays its agent a commission and includes this amount in the price it charges the buyer for the imported goods, no addition is made for the selling commission since it is already included in the price). Selling commissions incurred by the buyer with respect to the imported merchandise are included in the transaction value either as part of the price actually paid or payable or as an addition thereto.

Buying commissions are not one of the specified additions to the price actually paid or payable. Therefore, no addition is made for *bona fide* buying commissions incurred by the buyer (that is, commissions paid to a *bona fide* buying agent who meets the criteria discussed in this publication). Except as noted below, *bona fide* buying commissions are not included in the transaction value of the imported merchandise.

WHEN ARE BUYING COMMISSIONS INCLUDED IN TRANSACTION VALUE?

Buying commissions are included in the transaction value of the imported merchandise when they are part of the total payment made by the buyer to the seller. This is because the TAA does not authorize any deductions from the price actually paid or payable for buying commissions. (Example, the manufacturer bills the importer \$100 for the imported merchandise and the importer pays this amount to the manufacturer. This price includes a \$5 buying commission which the manufacturer will pay to the buying agent upon receipt of the \$100 payment from the importer. Even if Customs is satisfied that the intermediary is a *bona fide* buying agent, the total payment made by the buyer to the seller is \$100 and no subtraction would be made for commissions the buying agent receives).

WHAT ARE SOME EXAMPLES OF SERVICES WHICH ARE OFTEN PROVIDED BY BUYING AGENTS?

Examples of services which are characteristic of those rendered by a buying agent include compiling market information, gathering samples, translating, informing the seller of the desires of the buyer, locat-

ing suppliers, placing orders based on the buyer's instructions, procuring the merchandise, assisting in factory negotiation, inspecting and packing merchandise, and arranging for shipment and payment. This is not an exhaustive list.

WHEN IS THE INTERMEDIARY A *BONA FIDE* BUYING AGENT?

The courts have said that no single factor is determinative. Whether a person is a *bona fide* buying agent depends upon the all the relevant facts of each case and the totality of the evidence. The fact that a person is called a buying agent does not mean that he/she is in fact a *bona fide* buying agent. Also, the fact that a person enters into a buying agency agreement with the buyer does not mean that such person is a *bona fide* buying agent. Having authority to act as a *bona fide* buying agent is not the same as actually performing as one. What needs to be considered is whether the services actually performed by the agent is what the parties agreed to and whether such actions are consistent with a *bona fide* buying agency.

In order to be considered a *bona fide* buying agent, the purported agent must be acting on behalf of and primarily for the benefit of the buyer, rather than for the seller or himself/herself. The main factor which determines whether a party is a *bona fide* buying agent is the right of the buyer to control the agent's conduct with respect to those matters entrusted to the agent. The buyer should control the purchasing process and the buying agent should take directions from the buyer and act upon the buyer's instructions. For example, a buying agent usually does not control who the manufacturer is or what is to be purchased. Normally, the buyer makes such decisions and the buying agent carries them out. Also, a buying agent usually does not control the manner of payment and other significant aspects of the purchase. While a buying agent may exercise some discretion, the ultimate purchasing decisions should be made by the buyer and not by the buyer's agent. The more discretion the purported agent has, the less likely it is that such person is a *bona fide* buying agent.

Some factors considered by the courts which go to the main issue of "control" are: 1) which party bears the risk of loss for lost or damaged merchandise? (generally, a buying agent does not bear the risk of loss); 2) who absorbs the cost of shipping and handling? (buying agents generally do not absorb such costs); 3) which party controls the manner of payment for the goods? (generally, a buying agent would not control how and when the seller is paid); 4) could the buyer purchase from the manufacturers without using the services of the agent (if the answer is no, the agent may be a selling agent); 5) was the intermediary operating an independent business primarily for its own benefit? (if the answer is yes, it is possible that the intermediary is not an agent but an independent seller); 6) is the intermediary financially detached from the manufacturer or seller? (if not, it is possible that the intermediary may not be acting on behalf of the buyer, but on behalf of the seller); 7) what do the commercial documents show? (e.g., how are the parties referred

to in the commercial documents; is there a buying agency agreement; is there a purchase agreement and if so, who are the parties thereto).

In many cases, a written buying agency agreement is entered into between the buyer and the buying agent which outlines the responsibilities of each party and sets forth the amount of commissions that are to be paid. In such case, the terms of the agreement should be reviewed to see whether they are consistent with a buying agency and whether the purported agent is actually performing the functions as provided in the agreement.

The totality of the evidence must be examined in order to determine whether there is a *bona fide* buying agency. The bottom line: does the evidence prove that the buyer is the party in control and that the purported agent is working for the buyer and not the seller or himself/herself?

WHAT ARE SOME INDICATIONS THAT THE INTERMEDIARY IS NOT A BONA FIDE BUYING AGENT BUT RATHER AN INDEPENDENT SELLER?

In some cases an intermediary may not be functioning as an agent at all, but rather as an independent buyer/seller. In such case, the amount that is referred to as the buying commission may actually be the intermediary's mark-up or profit which would constitute part of the total price paid by the buyer and part of transaction value. Some indications would be that the intermediary operates an independent business primarily for its own benefit, that it has unlimited discretion regarding the purchase of the goods from the seller, that the purported buyer and seller have no direct contact, and that the intermediary obtains title to the goods. For further discussion, see Informed Compliance Publication "*Bona Fide Sales and Sales for Exportation*".

WHAT IS THE SIGNIFICANCE OF A BUYING AGENCY AGREEMENT OR THE ABSENCE OF SUCH AN AGREEMENT?

A written buying agency agreement which sets forth the obligations of the buyer and agent is evidence of the buying agency. However, it is not determinative. While the agreement is important, it is more important to consider whether the parties are actually doing what they agreed to do. For example, the fact that the agreement indicates that the agent must obtain the buyer's written approval before entering into an agreement with the seller is meaningless if the purported agent never obtains the buyer's written approval. Also, the fact that the agreement indicates that the buyer will be responsible for selecting the manufacturer is meaningless if the purported agent selects the manufacturer. Where the actions of the parties indicate that the buyer maintains little or no control over the agent, there is no *bona fide* buying agency relationship, even if the agreement provides otherwise.

The absence of a buying agency agreement does not necessarily preclude the existence of a *bona fide* buying agency relationship. However, it will be very difficult to establish one without it.

WHAT IF THE SELLER AND THE INTERMEDIARY ARE RELATED?

Since a buying agent is supposed to be acting on behalf of the buyer and in the best interests of the buyer, it is more difficult to show that the intermediary is a *bona fide* buying agent when it is related to the seller. The courts have said that while a relationship between the buying agent and the seller does not preclude the existence of a buying agency, the circumstances surrounding such transactions are subject to closer scrutiny. One factor that Customs has looked at in these cases is whether the purported agent always obtains the imported merchandise from the related seller or whether it also regularly uses unrelated sellers. If the purported buying agent obtains the imported merchandise only from its related seller, it will be difficult for the importer to show that the agent is acting in the best interests of and under the direction and control of the buyer and a finding of a *bona fide* buying agency is unlikely. Another relevant factor when the seller and the intermediary are related is whether any of the commissions paid by the buyer inure to the benefit of the seller. If they do, this would not be consistent with a *bona fide* buying agency relationship.

WHO HAS THE BURDEN OF PROOF TO ESTABLISH THE EXISTENCE OF A *BONA FIDE* BUYING AGENCY?

The importer has the burden of proving the existence of a *bona fide* buying agency relationship. Absent sufficient proof, commissions paid by the importer will be included in the transaction value of the imported merchandise.

HOW SHOULD BUYING COMMISSIONS BE SHOWN ON THE COMMERCIAL DOCUMENTS?

There is no one invoicing method that must be used with regard to buying commissions. However, the method used (along with the method of payment) can either facilitate a determination of non-dutiable buying commissions or make such a finding more difficult. The method of invoicing and the method of payment is part of the total evidence that must be considered before a determination can be made regarding the status of so-called buying commissions. For example, the easiest way to show that the middleman is not a seller and that the payments to the middleman represent buying commissions is for the seller to invoice the buyer for the purchase price of the imported merchandise and for the middleman to invoice the buyer separately for its commissions. The buyer would then pay the seller for the goods and separately pay the middleman for its services. This method clearly shows the price paid for the imported merchandise and the amount of the commission.

WHAT DOCUMENTARY EVIDENCE IS NEEDED TO PROVE THE EXISTENCE OF A *BONA FIDE* BUYING AGENCY?

Before an importer declares the commissions as non-dutiable buying commissions, the importer should be satisfied that the totality of the evidence demonstrates that the purported agent is a *bona fide* buying agent and not a selling agent nor an independent seller. The importer

should be prepared to submit evidence which proves its claim. At a minimum, an invoice or other documentation from the seller, showing who the seller is, and establishing the price actually paid or payable for the imported goods must be submitted at the time of entry or upon demand by Customs if not requested at the time of entry. Any buying commissions should be shown separately from the price actually paid or payable for the imported merchandise. Any written buying agency agreement, invoices pertaining to the payment of buying commissions and other evidence of the buying agency should be submitted at the time of entry or upon request by Customs. The final determination of whether the commissions paid are *bona fide* buying commissions is made by Customs based on the documentation submitted.

WHAT HAPPENS IF THE IMPORTER DOES NOT PROVE THE EXISTENCE OF A *BONA FIDE* BUYING AGENCY?

Where an intermediary is involved in the import transaction and the importer cannot establish its role as a *bona fide* buying agent, depending on the facts presented, the intermediary will be considered either a selling agent or an independent seller. An importer who declares commissions as non-dutiable buying commissions without the evidence to back up its claim would not be exercising reasonable care and may be subject to penalty or other enforcement compliance action.

WHEN IS THE INTERMEDIARY A SELLING AGENT?

The same agency principles applicable to buying agents also apply to selling agents. However, in a selling agency, the principal is the seller. A selling agent represents the interests of the seller, rather than the buyer, in the sale of the imported merchandise. A selling agent may seek customers, collect orders, or otherwise assist the seller in the sale of the imported merchandise. In the case of a selling agency, the seller controls the actions of the selling agent with respect to those matters entrusted to the agent. For example, an importer may arrange for the purchase and importation of the merchandise with the seller's agent, rather than the seller. A selling agent could negotiate with the importer, on behalf of the seller, concerning the sale of the imported goods. However, it is the seller, and not its agent, who has the ultimate authority with respect to the sale of the goods. If the intermediary has complete discretion regarding the sale of the goods, and/or obtains title and ownership from the seller, the intermediary would be considered an independent buyer/seller and not a selling agent.

When the intermediary and the seller are related, close scrutiny is required in ascertaining whether the intermediary is a *bona fide* buying agent or a selling agent. When the intermediary always obtains imported merchandise from its related sellers, it is likely that the intermediary is actually a selling agent. A similar result would be reached if any or all of the commissions paid by the buyer inure to the benefit of the seller.

Unless already included in the price, all selling commissions incurred by the buyer with respect to the imported merchandise are to be added to the price actually paid or payable for those goods.

DOES AN IMPORTER HAVE AN OBLIGATION TO REPORT COMMISSIONS TO CUSTOMS UPON ENTRY OF THE MERCHANDISE?

Yes. The importer is required to sign a declaration on the Customs Form 7501 submitted at the time of entry, which indicates among other things, that the submitted invoices include commissions. In this regard, 19 U.S.C. § 1481, as amended, specifies that all invoices of merchandise to be imported into the United States and any electronic equivalent thereof shall prescribe, among other things, all charges upon the merchandise, including commissions. In addition, 19 U.S.C. § 1481 requires the furnishing of any other facts deemed necessary to a proper appraisal of the merchandise. 19 U.S.C. § 1484, as amended, provides that an importer shall, using reasonable care complete the entry by filing with the Customs Service the declared value, * * * and such other documentation or, pursuant to an electronic data interchange system, such other information as is necessary to enable the Customs Service to properly assess duties on the merchandise. This would include sufficient information to enable Customs to determine whether any commissions were paid by the buyer in connection with the imported merchandise and if so, whether they are buying or selling commissions. Therefore, invoices relating to the payment of the imported merchandise and the payment of commissions (both buying and selling commissions) and other relevant information discussed above should be provided to Customs. An importer who fails to declare commissions would not be exercising reasonable care and may be subject to penalty or other enforcement compliance action.

ADDITIONAL INFORMATION

Publications

Customs Valuation Under the Trade Agreements Act of 1979 is a 96-page book containing a detailed narrative description of the customs valuation system, the customs valuation title of the Trade Agreements Act (§ 402 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (19 U.S.C. § 1401a)), the Statement of Administrative Action which was sent to the U.S. Congress in conjunction with the TAA, regulations (19 C.F.R. §§ 152.100-152.108) implementing the valuation system (a few sections of the regulations have been amended subsequent to the publication of the book) and questions and answers concerning the valuation system. A copy may be obtained from the U.S. Customs Service, Office of Regulations and Rulings, Value Branch, 1301 Constitution Avenue, N.W., Franklin Court Building, Washington, D.C. 20229.

Customs Valuation Encyclopedia (with updates) is comprised of relevant statutory provisions, Customs Regulations implementing the statute, portions of the Customs Valuation Code, judicial precedent, and

administrative rulings involving application of valuation law. A copy may be purchased for a nominal charge from the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7054.

What Every Member of the Trade Community Should Know About: Customs Value is a basic level informed compliance publication of the Customs Service which discusses the Customs valuation laws. Copies may be downloaded from the Customs Electronic Bulletin Board (see below).

Customs Regulations

The current edition of *Customs Regulations of the United States*, in loose-leaf format, is available by subscription from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. The bound 1996 Edition of Title 19, *Code of Federal Regulations*, which incorporates all changes to the *Customs Regulations* from April, 1995 through March, 1996 will be available for sale from the same address. All proposed and final regulations are published in the *Federal Register* which is published daily by the Office of the Federal Register, National Archives and Records Administration, and distributed by the Superintendent of Documents. Information on on-line access to the *Federal Register* may be obtained by calling (202) 512-1530 between 7 a.m. and 5 p.m. Eastern time.

Customs Bulletin

The *Customs Bulletin and Decisions* ("CUSTOMS BULLETIN") is a weekly publication which contains decisions, rulings, regulatory proposals, notices and other information of interest to the trade community. It also contains decisions issued by the U.S. Court of International Trade and Customs related decisions of the U.S. Court of Appeals for the Federal Circuit. Bound volumes are issued annually. The *CUSTOMS BULLETIN* is available for sale from the Superintendent of Documents.

Customs Electronic Bulletin Board

The Customs Electronic Bulletin Board (CEBB) is an automated system which provides the entire trade community with current, relevant information regarding Customs operations and items of special interest. It was established as another effort to promote the Customs Service as "trade friendly" within the importing and exporting community. The CEBB posts timely information including proposed regulations, news releases, Customs publications and notices, etc. which may be "downloaded" to your own PC. The Customs Service does not charge the public to use the CEBB. You only pay telephone charges. To use the CEBB, you must have a personal computer with a modem. The CEBB supports modem speeds from 2400 to 28,800 baud. Set up your terminal as ANSI, set databits to 8, set parity to N and stopbits to 1. Dial (703) 440-6155 and log on with your name and choose a password. After a few questions, you are set to get up-to-date information from Customs. If you have any questions about the CEBB, call (703) 440-6236.

Additional information may be obtained from Customs ports of entry. Please consult your telephone directory for a Customs office near you. The listing will be found under U.S. Government, Treasury Department.

The information provided in this publication is for general information purposes only. Recognizing that many complicated factors may be involved in customs valuation issues, an importer may wish to obtain a ruling under Customs Regulations, 19 C.F.R. Part 177, or obtain advice from an expert (such as a licensed Customs Broker, attorney or consultant) who specializes in Customs valuation. Reliance solely on the general information in this pamphlet may not be considered reasonable care.

What Every Member of the
Trade Community Should Know About:

BONA FIDE SALES AND SALES FOR EXPORTATION



An Advanced Level Informed Compliance Publica-
tion of the U.S. Customs Service

November, 1996

PREFACE

On December 8, 1993, Title VI of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), which is also known as the Customs Modernization Act or "Mod Act," became effective. These provisions amended many sections of the Tariff Act of 1930 and related laws. Two new concepts which emerge from the Mod Act are "*informed compliance*" and "*shared responsibility*." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the Mod Act imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act, as amended, (19 U.S.C. § 1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met. The Customs Service is then responsible for fixing the final classification and value of the merchandise. The failure of an importer of record to exercise reasonable care may lead to delay in the release of merchandise or the imposition of penalties.

This office has been given a major role in meeting Customs informed compliance responsibilities. In order to provide information to the public, Customs intends to issue a series of informed compliance publications, and possibly cd-roms and videos, on topics such as value, classification, entry procedures, determination of country of origin, marking requirements, intellectual property rights, recordkeeping, drawback, penalties and liquidated damages.

The Value Branch in the International Trade Compliance Division of the Office of Regulations and Rulings has prepared this publication on *Bona Fide Sales and Sales for Exportation*, as part of a series of informed compliance publications regarding the appraisal of imported merchandise. It is hoped that this material, together with seminars and increased access to Customs rulings, will help the trade community in improving voluntary compliance with the Customs laws.

The information provided in this publication is for general information purposes only. Recognizing that many complicated factors may be involved in customs valuation issues, an importer may wish to obtain a ruling under Customs Regulations, 19 C.F.R. Part 177, or obtain advice from an expert (such as a licensed Customs Broker, attorney or consultant) who specializes in Customs matters. Reliance solely on the general information in this pamphlet may not be considered reasonable care.

Comments and suggestions are welcomed, and should be addressed to the Assistant Commissioner at the Office of Regulations and Rulings, U.S. Customs Service, 1301 Constitution Avenue, NW (Franklin Ct. Bldg), Washington, DC 20229.

STUART P. SEIDEL,
Assistant Commissioner,
Office of Regulations and Rulings.

TABLE OF CONTENTS

How is imported merchandise appraised?	42
What is transaction value?	42
What is the price actually paid or payable?	42
What is the relevance of a <i>bona fide</i> sale and sale for exportation?	42
What is a "sale"?	42
What is consideration?	42
What factors are determinative of a <i>bona fide</i> sale?	43
What factors indicate whether property or ownership was transferred?	43
What role does possession play in determining whether property or ownership was transferred?	43
What significance is afforded to shipping terms?	43
What is the relevance as to whether a contract is a "shipment" or "destination" contract?	43
When does a simultaneous passage of title occur and what does it indicate about the transfer of title?	44
What other factors indicate that a <i>bona fide</i> sale has occurred? ...	44
What evidence or documentation, other than shipping terms, indicates whether a <i>bona fide</i> sale has occurred?	45
When does an inquiry concerning a sale for exportation become relevant?	45
If more than one <i>bona fide</i> sale occurs, how is transaction value determined?	45
When does a party serve as a "middleman" to a transaction? ...	46
When is the manufacturer's price acceptable in accordance with <i>Nissho Iwai</i> ?	46
What is the relevance as to whether a sale is conducted at "arm's length" and is "clearly destined for export to the U.S."	47
When is a sale considered to have been conducted at "arm's length"?	47
When is a sale clearly destined for export to the U.S.?	47
Additional Information	47

WHAT EVERY MEMBER OF THE TRADE COMMUNITY SHOULD KNOW ABOUT: *BONA FIDE* SALES AND SALES FOR EXPORTATION

HOW IS IMPORTED MERCHANDISE APPRAISED?

All merchandise imported into the United States is subject to appraisal. The Trade Agreements Act of 1979 ("the TAA"), codified at 19 U.S.C. 1401a, sets forth the rules for appraisal of imported merchandise. Pursuant to the TAA, the preferred method of appraisal is **transaction value**. For further information see the informed compliance publication "*Customs Value*," May, 1996.

WHAT IS TRANSACTION VALUE?

The transaction value of imported merchandise is the price actually paid or payable for merchandise when sold for exportation to the United States, plus certain statutorily enumerated additions.

WHAT IS THE PRICE ACTUALLY PAID OR PAYABLE?

The price actually paid or payable for imported merchandise is the total payment, exclusive of any costs, charges, or expenses incurred for transportation, insurance, and related services incident to the international shipment of the merchandise from the country of exportation to the place of importation in the United States, made, or to be made, for imported merchandise by the buyer to, or for the benefit of, the seller.

WHAT IS THE RELEVANCE OF A *BONA FIDE* SALE AND SALE FOR EXPORTATION?

Transaction value, by definition, requires that a sale for exportation to the United States occur. Customs separates this concept into two components: *bona fide*, or "good faith," sales and sales for exportation. If it is shown that both a *bona fide* sale and sale for exportation occurred, this component of transaction value is met and Customs would not be precluded from appraising merchandise based on transaction value.

WHAT IS A "SALE?"

Customs defines the term "sale," as the transfer of property from one party to another for consideration.

WHAT IS CONSIDERATION?

With regard to sales transactions, consideration means payment from one party to another for the imported merchandise. Evidence to establish that consideration has passed includes evidence of payment by check, bank transfer, or payment by any other commercially acceptable manner. Furthermore, it also is necessary to demonstrate that payment was made for the imported merchandise; general transfers of money from one corporate entity to another which cannot be linked to a specific import transaction are not sufficient to show passage of consideration.

WHAT FACTORS ARE DETERMINATIVE OF A *BONA FIDE* SALE?

Although several factors may indicate whether a *bona fide* sale has taken place between a potential buyer and seller of imported merchandise, no single factor is determinative. Rather, the relationship is to be evaluated by an overall view of the entire situation, with the result in each case governed by the facts and circumstances of the individual case.

WHAT FACTORS INDICATE WHETHER PROPERTY OR OWNERSHIP WAS TRANSFERRED?

In determining whether property or ownership has been transferred, Customs considers whether the potential buyer has assumed the risk of loss (*i.e.* is liable for goods when lost or damaged during shipment) and acquired title to (*i.e.*, legally possesses or owns) the imported merchandise. In addition, Customs may examine whether the potential buyer paid for the goods (*i.e.*, consideration passed between the parties). Regardless as to whether property or ownership is transferred, transactions involving goods which are shipped on consignment do not constitute *bona fide* sales.

WHAT ROLE DOES POSSESSION PLAY IN DETERMINING WHETHER PROPERTY OR OWNERSHIP WAS TRANSFERRED?

While possession serves as a strong indication that property or ownership has been transferred, Customs still may find that the potential buyer assumed the risk of loss and/or acquired title although the buyer never had actual possession of the goods.

WHAT SIGNIFICANCE IS AFFORDED TO SHIPPING TERMS?

In situations where no other pertinent evidence has been made available, Customs may reach its determination concerning a *bona fide* sale based on the terms of sale (*e.g.*, FOB, CIF, ExFactory), indicating when title and risk of loss are transferred. Otherwise, the terms of sale will be considered as part of the overall view of the entire situation in conjunction with all other relevant evidence. Customs primarily will consider as controlling the terms of sale provided on the invoices and written contracts or agreements regarding the sale of the merchandise. The meaning of all such shipping terms will be construed consistent with "Incoterms 1990," unless the transacting parties demonstrate through contracts, other legally enforceable agreements, or course of dealing, that they have afforded different meanings to the terms.

WHAT IS THE RELEVANCE AS TO WHETHER A CONTRACT IS A "SHIPMENT" OR "DESTINATION" CONTRACT?

Whether the applicable contract between the transacting parties is a "shipment" or "destination" contract may indicate when, based on the terms of sale, title and risk of loss pass from the seller to the buyer. FOB point of shipment contracts and CIF, C&F, and other "C" term contracts are "shipment" contracts while FOB place of destination contracts are "destination" contracts (*e.g.*, FOB San Francisco), unless otherwise

agreed by the parties. Title and risk of loss generally are understood to pass from the seller to the buyer in "shipment" contracts when the merchandise is delivered to the carrier for shipment and in "destination" contracts when the merchandise is delivered to the named destination.

WHEN DOES A SIMULTANEOUS PASSAGE OF TITLE OCCUR AND WHAT DOES IT INDICATE ABOUT THE TRANSFER OF TITLE?

Particularly in situations where merchandise is shipped directly from the seller to the ultimate consignee, as opposed to being shipped from the seller to the intermediary and then to the ultimate consignee, the terms of sale may indicate that a simultaneous passage of title occurred. In other words, based on the shipping terms title and risk of loss pass from the seller to the intermediary, then immediately thereafter from the intermediary to the ultimate consignee. Consequently, the intermediary is considered to hold title only momentarily, if ever, and not to bear the risk of loss according to the terms of sale. Based solely on the shipping terms, a *bona fide* sale would not appear to exist between the seller and intermediary. However, in determining whether a *bona fide* sale occurs, Customs will consider other pertinent evidence or documentation if made available.

EXAMPLE:

Invoices and contracts between the parties provide for the FOB shipment of goods between the seller in country X and intermediary in country Y and for CIF shipment between the intermediary and ultimate consignee in the US. The submitted documents also indicate the goods were shipped directly from country X to the U.S.

Unless otherwise agreed by the parties, both the FOB and CIF contracts represent "shipment" contracts. Thus, title and risk of loss will be considered to pass from the seller to the intermediary when the merchandise was delivered to the carrier for shipment, then immediately thereafter from the intermediary to the ultimate consignee. Hence, based on the shipping terms, a *bona fide* sale would not appear to exist between the seller and intermediary, but rather between the seller and U.S. ultimate consignee, with the intermediary potentially serving as an agent. However, if available, it would be appropriate to consider other pertinent evidence or documentation concerning the *bona fides* of the sale.

WHAT OTHER FACTORS INDICATE THAT A BONA FIDE SALE HAS OCCURRED?

In determining whether a *bona fide* sale has occurred, Customs also will consider whether, in general, the roles of the parties and circumstances of the transaction indicate that the parties were functioning as buyer and seller. While it is characteristic of a buyer-seller relationship for the parties to maintain an independence in their dealings, in a principal-agent relationship the former will control the actions of the latter.

Specifically, Customs considers as evidence of a buyer-seller relationship whether the potential buyer:

- a. provided (or could provide) instructions to the seller;
- b. was free to sell the items at any price he or she desired;
- c. selected (or could select) his or her own customers without consulting the seller; and
- d. could order the imported merchandise and have it delivered for his or her own inventory.

The fact that a potential buyer cannot assume such tasks is an indication that the party is serving as an agent. For further information concerning principal-agent relationships see the informed compliance publication "*Buying and Selling Commissions*," June, 1996.

WHAT EVIDENCE OR DOCUMENTATION, OTHER THAN SHIPPING TERMS, INDICATES WHETHER A *BONA FIDE* SALE HAS OCCURRED?

Contracts, distribution and other similar agreements, invoices, purchase orders, bills of lading, proof of payment, correspondence between the parties, and company reports or brochures all may serve as evidence that a party possesses title and risk of loss and functions as a buyer/seller, indicating that a *bona fide* sale occurs. Such documentation should be consistent in its entirety and with the transaction in general (*i.e.*, consistent prices, dates, parties and merchandise). Further, the documentation and language included therein should reveal the substance of the transaction, including the obligations and roles of the parties. While formal sales contracts and other types of memorialized agreements (such as distribution or production agreements) generally are most revealing in this regard, other documentation (such as purchase orders, invoices, and proof of payment) evincing the structure of the transaction are crucial, especially in the absence of any written agreements. The terminology utilized in such agreements and documentation, *i.e.*, "buyer," "seller," "principal," or "agent," although indicative, is not dispositive of the parties' roles.

WHEN DOES AN INQUIRY CONCERNING A SALE FOR EXPORTATION BECOME RELEVANT?

Once it has been established that a *bona fide* sale occurred, the law requires that such sale be for exportation to the United States.

IF MORE THAN ONE *BONA FIDE* SALE OCCURS, HOW IS TRANSACTION VALUE DETERMINED?

Customs presumes that an importer's declared value is based on the price paid by that importer and that transaction value shall be based on that price. Therefore, in situations where the importer is the middleman, transaction value generally is based on the manufacturer's price to the importer. However, in situations where the importer is not the middleman, but the importer requests appraisal based on the manufacturer's price, it is the importer's responsibility to show that the manufacturer's price is acceptable in accordance with *Nissho Iwai*

American Corporation v. United States, 16 CIT 86, 786 F. Supp. 1002 (1992) *rev'd* 982 F.2d 505 (Fed. Cir. 1992). Without such evidence, transaction value will be based on the middleman's price to the importer.

WHEN DOES A PARTY SERVE AS A "MIDDLEMAN" TO A TRANSACTION?

When at least two *bona fide* sales occur and the same party serves as a buyer (usually from a foreign manufacturer) as well as a seller (usually to a U.S. importer or consignee) in a particular transaction, that party is considered a "middleman." Depending on the manner in which a transaction is structured, the importer of record, consignee, or any other type of buyer/seller, even if in the U.S., may be a middleman. Where a transaction consists of more than two sales, generally there will be several middlemen.

WHEN IS THE MANUFACTURER'S PRICE ACCEPTABLE IN ACCORDANCE WITH *NISSHO IWAI*?

The *Nissho Iwai* decision, which involved a three tiered distribution system with four parties, is relevant not only in determining whether a sale was clearly destined for export to the U.S., but also in determining whether transaction value appropriately is based on a manufacturer's price, rather than a middleman's price. In *Nissho Iwai*, the New York City Metro Transit Authority (MTA) contracted to purchase subway cars from Nissho Iwai American Corporation (Nissho America). The contract between the MTA and Nissho America represented the highest price among the various transactions. Kawasaki Industries of Japan (Kawasaki) and Nissho Iwai Corporation of Japan (Nissho Japan) participated in negotiations and a bid proposal with the MTA. Nissho Japan purchased cars from Kawasaki, the primary Japanese manufacturer. Pursuant to the master contract, Kawasaki provided a warranty of performance to the MTA and Nissho America. As permitted by the contract, Nissho America assigned its contract rights to Nissho Japan. The issue before the courts was whether transaction value was appropriately based on the Kawasaki-Nissho Japan sales price or the MTA-Nissho America price reflected in the master contract.

The court provided that the manufacturer's price was valid as long as the transaction between the manufacturer and the middleman was a sale negotiated at "arm's length" free from any nonmarket influences and involved goods "clearly destined for export to the U.S." This presupposes that *bona fide* sales occurred and the use of transaction value is not otherwise precluded pursuant to the valuation law (e.g., restrictions on the disposition or use of the merchandise; conditions or considerations for which a value cannot be determined; lack of sufficient information concerning an enumerated statutory addition to the price actually paid or payable, etc.). Based on the evidence presented in *Nissho Iwai*, the court found transaction value appropriately to be based on the Kawasaki-Nissho Japan sales price.

WHAT IS THE RELEVANCE AS TO WHETHER A SALE IS CONDUCTED AT "ARM'S LENGTH" AND IS "CLEARLY DESTINED FOR EXPORT TO THE U.S.?"

If a sale is not conducted at "arm's length" or not "clearly destined for export to the U.S.," it cannot serve as the basis for transaction value.

WHEN IS A SALE CONSIDERED TO HAVE BEEN CONDUCTED AT "ARM'S LENGTH?"

In general, Customs will consider a sale between unrelated parties to have been conducted at "arm's length." However, if the parties are related, a sale will be considered "arm's length" if an examination of the circumstances of the sale of the imported merchandise indicates that the relationship between the buyer and seller did not influence the price actually paid or payable or if the transaction value closely approximates a test value. For further information see "Transfer Pricing; Related Party Transactions" 58 FR 5445 (January 21, 1993).

WHEN IS A SALE CLEARLY DESTINED FOR EXPORT TO THE U.S.?

Although such a determination can only be made on a case-by-case basis, Customs will consider a sale to be clearly destined for export to the U.S. based on evidence such as invoices, contracts and purchase orders; shipping contracts or other documentation; manufacture, design, and other unique specifications or characteristics of the merchandise (often manifest in samples) made in conformity with the buyer's standards; labels, logos, stock numbers, bar codes and other unique marks; and marking, visas, warranties or other types of certification or characteristics required for entry or operation in the U.S. As evidence that a sale was clearly destined for export to the U.S., the submitted documentation should comprise a complete paper trail, showing the structure of the entire transaction. Such a paper trail likewise supports the initial finding that a *bona fide* sale occurred.

ADDITIONAL INFORMATION

Customs Electronic Bulletin Board

The Customs Electronic Bulletin Board (CEBB) is an automated system which provides the entire trade community with current, relevant information regarding Customs operations and items of special interest. It was established as another effort to promote the Customs Service as "trade friendly" within the importing and exporting community. The CEBB posts timely information including proposed regulations, news releases, Customs publications and notices, etc. which may be "downloaded" to your own PC. The Customs Service does not charge the public to use the CEBB. You only pay telephone charges. To use the CEBB, you must have a personal computer with a modem. The CEBB supports modem speeds from 2400 to 28,800 baud. Set up your terminal as ANSI, set databits to 8, set parity to N and stopbits to 1. Dial (703) 440-6155 and log on with your name and choose a password. After a few questions, you are set to get up-to-date information from Customs. If you have any questions about the CEBB, call (703) 440-6236.

The Internet

The Customs home page on the Internet's World Wide Web—which began public operation on August 1, 1996—will also provide the entire trade community with current, relevant information regarding Customs operations and items of special interest. It was established as another effort to promote the Customs Service as "trade friendly" within the importing and exporting community. The home page will post timely information including proposed regulations, news releases, Customs publications and notices, *etc.*, which may be printed or "downloaded" to your own PC. Not all features may be available in the beginning. The Customs Service does not charge the public for this service, although you will need Internet access to use it. The Internet address for Customs home page is <http://www.customs.ustreas.gov>.

Customs Regulations

The current edition of *Customs Regulations of the United States*, in loose-leaf format, is available by subscription from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. The bound 1996 Edition of Title 19, *Code of Federal Regulations*, which incorporates all changes to the *Customs Regulations* from April, 1995 through March, 1996 is also available for sale from the same address. All proposed and final regulations are published in the *Federal Register* which is published daily by the Office of the Federal Register, National Archives and Records Administration, and distributed by the Superintendent of Documents. Information on on-line access to the *Federal Register* may be obtained by calling (202) 512-1530 between 7 a.m. and 5 p.m. Eastern time. These notices are also published in the weekly CUSTOMS BULLETIN described below.

Customs Bulletin

The *Customs Bulletin and Decisions* ("Customs Bulletin") is a weekly publication which contains decisions, rulings, regulatory proposals, notices and other information of interest to the trade community. It also contains decisions issued by the U.S. Court of International Trade and Customs related decisions of the U.S. Court of Appeals for the Federal Circuit. Bound volumes are issued annually. The CUSTOMS BULLETIN is available for sale from the Superintendent of Documents.

Video Tapes

The U.S. Customs Service has prepared a two hour video tape in VHS format to assist Customs officers and members of the public in understanding the new *Rules of Origin for Textiles and Apparel Products* which became effective on July 1, 1996. Copies of this tape are available from many trade organizations, customs brokers, consultants and law firms. The tape may also be purchased for \$20.00 (U.S. funds) directly from the Customs Service. If you require further information, or would like to purchase one or more tapes, please forward your written request to: U.S. Customs Service, Office of Regulations and Rulings, 1301 Constitution Avenue, NW, Franklin Court, Washington, DC

20229, Attn: Operational Oversight Division. Orders must be accompanied by a check or money order drawn on a U.S. financial institution and made payable to U.S. Customs Service.

Informed Compliance Publications

The U.S. Customs Service has also prepared other Informed Compliance publications in the *What Every Member of the Trade Community Should Know About*: series, which are available from the Customs Electronic Bulletin Board and the Customs Home Page (see above). As of the date of this publication, the following booklets were available:

- *Fibers & Yarns*
- *Buying & Selling Commissions*
- *NAFTA for Textiles & Textile Articles*
- *Raw Cotton*
- *Customs Valuation*
- *Textile & Apparel Rules of Origin*
- *Mushrooms*
- *Marble*
- *Peanuts*

Check the Customs Electronic Bulletin Board and the Customs Home Page for more recent publications.

Other Value Publications

Customs Valuation under the Trade Agreements Act of 1979 is a 96-page book containing a detailed narrative description of the customs valuation system, the customs valuation title of the Trade Agreements Act (§ 402 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (19 U.S.C. § 1401a)), the Statement of Administrative Action which was sent to the U.S. Congress in conjunction with the TAA, regulations (19 C.F.R. §§ 152.000-152.108) implementing the valuation system (a few sections of the regulations have been amended subsequent to the publication of the book) and questions and answers concerning the valuation system. A copy may be obtained from the U.S. Customs Service, Office of Regulations and Rulings, Value Branch, 1301 Constitution Avenue, N.W., Franklin Court Building, Washington, D.C. 20229.

Customs Valuation Encyclopedia (with updates) is comprised of relevant statutory provisions, Customs Regulations implementing the statute, portions of the Customs Valuation Code, judicial precedent, and administrative rulings involving application of valuation law. A copy may be purchased for a nominal charge from the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7054.

Additional information may be obtained from Customs ports of entry. Please consult your telephone directory for a Customs office near you. The listing will be found under U.S. Government, Treasury Department.

The information provided in this publication is for general information purposes only. Recognizing that many complicated factors may be

involved in customs valuation issues, an importer may wish to obtain a ruling under Customs Regulations, 19 C.F.R. Part 177, or obtain advice from an expert (such as a licensed Customs Broker, attorney or consultant) who specializes in Customs matters. Reliance solely on the general information in this pamphlet may not be considered reasonable care.

What Every Member of the
Trade Community Should Know About:

NAFTA
*(the North American
Free Trade Agreement)
for Textiles
and Textile Articles*



A Basic Level
Informed Compliance Publication of the
U.S. Customs Service

May 14, 1996

PREFACE

On December 8, 1993, Title VI of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), which is also known as the Customs Modernization Act or 'Mod Act', became effective. These provisions amended many sections of the Tariff Act of 1930 and related laws. Two new concepts which emerge from the Mod Act are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the Mod Act imposes a greater obligation on Customs to provide the public with relevant information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act, as amended, (19 U.S.C. § 1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met. The Customs Service is then responsible for fixing the final classification and value of the merchandise. The failure of an importer of record to exercise reasonable care may lead to delay in the release of merchandise or the imposition of penalties.

My office has been given a major role in meeting Customs informed compliance responsibilities. In order to provide information to the public, Customs intends to issue a series of informed compliance publications, and possibly cd-roms and videos, on topics such as value, classification, entry procedures, determination of country of origin, marking requirements, intellectual property rights, record-keeping, drawback, penalties and liquidated damages.

The National Commodity Specialist Division of the Office of Regulations and Rulings has prepared this publication on NAFTA for Textiles as one in a series. It is hoped that this material, together with seminars and increased access to Customs rulings, will help the trade community in improving voluntary compliance with the Customs laws.

The information provided in this publication is for general information purposes only. Recognizing that many complicated factors may be involved in customs classification issues, an importer may wish to obtain a ruling under Customs Regulations, 19 C.F.R. Part 177, or obtain advice from an expert (such as a licensed Customs Broker, attorney or consultant) who specializes in Customs classification. Reliance solely on the general information in this pamphlet may not be considered reasonable care. Comments and suggestions are welcomed, and should be addressed to me at the Office of Regulations and Rulings, U.S. Customs Service, 1301 Constitution Avenue, NW (Franklin Ct. Bldg), Washington, DC 20229.

STUART P. SEIDEL,
Assistant Commissioner,
Office of Regulations and Rulings.

TABLE OF CONTENTS

(Note to persons downloading the document electronically: if this document is reformatted in any way, page numbers shown in this table of contents might no longer be correct)

1. Introduction: "The Big Picture"—Determining NAFTA Benefits	54
Determining NAFTA Benefits and Import Requirements for Textiles	55
2. NAFTA Preference Rules	56
A. NAFTA Preference Rules (Overall)	56
Basic Steps in Textile Production	58
B. Four Basic Types of Specific Rules for Textile Products	58
C. Specific Rules Pertaining to Yarns	59
D. Specific Rules Pertaining to Fabric	60
E. Specific Rules Pertaining to Apparel	62
F. Specific Rules Pertaining to Articles	69
3. Country of Origin Rules for Textile and Apparel Products ..	70
A. New Country of Origin Rules (Section 102.21, CR)	70
B. Sets	74
C. NAFTA Preference Override	74
D. U.S. Goods Sent Abroad for Processing	75
4. Mexican Special Regime	75
5. Tariff Preference Levels (TPLs)	77
6. Documentation	80
A. Exporter's Certificate of Origin	80
B. Textile Country of Origin Declaration	80

NOTE: References to Section 102.21, of the Customs Regulations ("CR"), refer to Section 102.21 as added by T.D. 95-69, which was published in the Federal Register on September 5, 1995, 60 FR 46188. The current Customs Regulations of the United States in loose-leaf format are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. The 1996 Edition of Title 19, Code of Federal Regulations, which incorporates all changes to the Customs Regulations from April, 1995 through March, 1996 will be available for sale from the same address.

1. Introduction: "The Big Picture"—Determining NAFTA Benefits

Before getting into the details, we will first step back and look at the "Big Picture" of NAFTA benefits and how to determine which ones apply to your goods. After we understand what each of the rules are used for, we will look at the rules themselves in detail, as they apply to textiles. At the end of this section is a flowchart that helps you to decide what you need to know about your particular textile product and how in general it is affected by NAFTA.

The first thing we might need to know is whether the goods are originating as defined in the NAFTA Preference Rules. If the goods are originating, then there are no import quotas or visa requirements and the goods are entitled to the reduced or free NAFTA duty rates. Which duty rate will apply (Mexico or Canada), will depend on the Marking Rules.

At the same time, you may also wish to consider whether the goods qualify under the Mexican Special Regime, a special program for certain goods assembled in Mexico from U.S. formed and cut components (see section 4 for details). If they do qualify for this program, they are free of duty and also free of quota and visa requirements, regardless of whatever all the other rules say. In the early stages of NAFTA, when not all duty rates have become free, one might consider the Mexican Special Regime first, since its benefits can be greater than those for normal NAFTA-originating goods.

If the goods are non-originating, there is still another benefit that might apply—Tariff Preference Levels (TPLs). Under these rules, goods will be entitled to the NAFTA reduced duty rates, until a numerical limit of imports is reached. *However, they may still be subject to quota/visa requirements* (see below).

If the goods are non-originating (whether or not they are entitled to TPLs), they may be subject to import quota and visa requirements. We use the Country of Origin Rules found in section 102.21, CR to determine which country is the country of origin:

If the country is Mexico, then certain categories of goods will have quota and visa requirements (details below).

If section 102.21, CR determines the country of origin to be Canada, there are no such restrictions.

If section 102.21, CR says the country of origin is a country other than Mexico or Canada, the goods will be subject to whatever quota and visa restrictions apply to goods of that country.

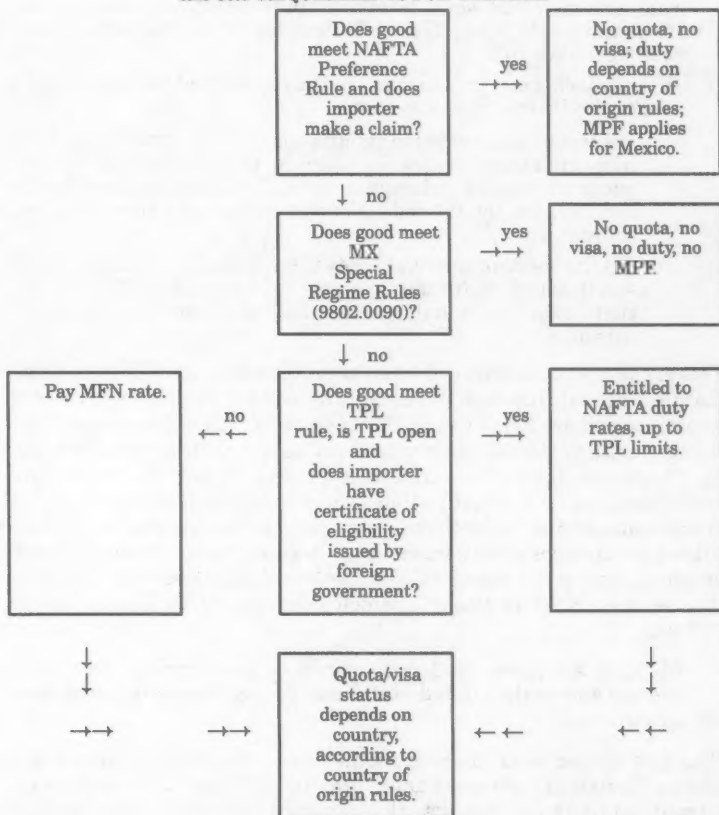
The absolute quotas from Mexico for non-originating goods will be phased out gradually. For instance, quotas on Mexico's exports of non-originating fabrics will be eliminated after the sixth year except for textile categories 410, 433, 443 and 611. Quotas on categories 410 and 611 will remain in place for ten years. Quota and visa requirements have been established for 21 different category numbers, covering 14 restraint levels. These requirements are only for goods that do not meet the rules of origin as specified in the Agreement, but that are products of

Mexico under section 102.21, CR. The fact that a given good might qualify for a TPL, does not exempt that good from quota and visa requirements, if they fall within one of the categories listed below:

219	347\348\647\648
313	410
314	433
315	443
317	611
338\339\638\639	633
340\640	643

Now that we have this overview of the various rules that can apply to textiles, we will take a closer look at each of them.

DETERMINING NAFTA BENEFITS AND IMPORT REQUIREMENTS FOR TEXTILES



2. NAFTA Preference Rules

A. NAFTA Preference Rules (Overall)

First, just to put things in perspective, let's look at the overall NAFTA Preference Rules for all goods, from Article 402 of the NAFTA. The rules are not sequential; the producer can pick and choose among the four of them. We refer to them, based on their designations in the Agreement, as Rules A, B, C and D, because those letters must be used to complete the NAFTA Certificate of Origin; however, we will use the text from General Note 12 of the HTSUSA. First consider Rule A, which corresponds to General Note 12(b)(I):

(i) they are goods wholly obtained or produced entirely in the territory of Canada, Mexico and/or the United States;

"Not one atom of foreign material" is one way to remember this rule, although that would be oversimplifying (see discussion of the *de minimis* rule, later). Next is Rule B, which corresponds to General Note 12(b)(ii):

(ii) they have been transformed in the territory of Canada, Mexico and/or the United States so that—

(A) except as provided in subdivision (f) of this note, each of the non-originating materials used in the production of such goods undergoes a change in tariff classification described in subdivisions (r), (s) and (t) of this note or the rules set forth therein, or

(B) the goods otherwise satisfy the applicable requirements of subdivisions (r), (s) and (t) where no change in tariff classification is required, and the goods satisfy all other requirements of this note

This is the rule we might use when there are some foreign (non-originating) materials involved. It requires us to check the "specific rules of origin," which are listed by the HTS number for the good, to see what changes in tariff classification must have occurred for the good to qualify. These rules differ from product to product. Some of them require just a change in tariff classification such as from one heading to another or from one chapter to another. Other rules have a change in tariff classification plus a specified percentage of Regional Value Content, or value added, within the Territory. We'll look at them more closely later in this section. Next is Rule C, which corresponds to General Note 12(b)(iii).

(iii) they are goods produced entirely in the territory of Canada, Mexico and/or the United States exclusively from originating materials;

This rule is used when there are some foreign materials involved, but those materials underwent changes required by Rule B to become an intermediate (NAFTA) product which in turn was made into the final

good. Finally there is Rule D, which corresponds to General Note 12(b)(iv):

(iv) they are produced entirely in the territory of Canada, Mexico and/or the United States but one or more of the non-originating materials falling under provisions for "parts" and used in the production of such goods does not undergo a change in tariff classification because—

(A) the goods were imported into the territory of Canada, Mexico and/or the United States in unassembled or disassembled form but were classified as assembled goods pursuant to general rule of interpretation 2(a), or

(B) the tariff headings for such goods provide for and specifically describe both the goods themselves and their parts and is not further divided into subheadings, or the subheadings for such goods provide for and specifically describe both the goods themselves and their parts,

provided that such goods do not fall under chapters 61 through 63, inclusive, of the tariff schedule, and provided further that the regional value content of such goods, determined in accordance with subdivision (c) of this note, is not less than 60 percent where the transaction value method is used, or is not less than 50 percent where the net cost method is used, and such goods satisfy all other applicable provisions of this note. For purposes of this note, the term "material" means a good that is used in the production of another good, and includes a part or an ingredient.

Rule D is really a pair of "fallback" rules for goods which fail to meet the other Rules, for goods assembled from unassembled kits, and for goods which are classified in the same provision as their parts. They can still qualify if they meet certain RVC requirements.

Now that we're talking about just textiles of HTSUSA Section XI, let's simplify these rules. The only ones that might apply to textiles are:

A. Wholly obtained or produced

An example would be cotton grown in Mexico, or a sweater made entirely in the NAFTA territory from cotton grown in Mexico.

B. Foreign materials meet tariff change rules (but note that none of the textile rules involve Regional Value Content).

We will see many examples of this rule later in this chapter. It is important to note at this point that no matter how much value has been added to foreign materials in the NAFTA territory, the good will not meet this rule unless it undergoes the specified change in tariff classification. The amount of "value added" is irrelevant for textiles.

C. Made entirely from originating materials.

If the exporter can prove that the *materials* used to make the goods were somehow originating (i.e., became a product of the NAFTA territory), there is no need to worry about satisfying the tariff change rule for the finished good.

Note that rule D does not apply to chapters 61-63. And since it involves parts, it is unlikely to apply very often to chapters 50-60, since few, if any, products in those chapters would ever involve parts. So, for practical purposes, we will also cross rule D off our list.

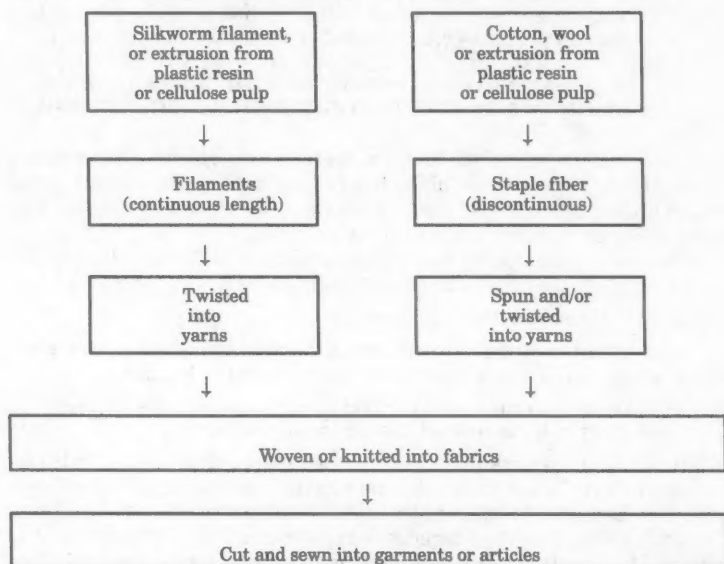
There are other things to remember about the basic NAFTA Preference Rules:

The De Minimis Rule says that for textiles, materials used in the component that determines the classification, that are 7% or less by weight and that don't meet the tariff change rules, can be disregarded.

Also remember that for all products, disregard shipment packing and retail packing in considering whether a good underwent the required tariff changes.

Now let's take a look at different textile product groups and see how they are treated by the Specific NAFTA Preference Rules (the ones that Rule B refers to).

BASIC STEPS IN TEXTILE PRODUCTION



B. Four Basic Types of Specific Rules for Textile Products

Generally, as shown in the chart on the previous page, the manufacturing progression in the textile sector is: fibers are made into yarns, yarns are made into fabric, fabric is cut into components, and cut components are sewn to complete finished articles or garments. Let's look

at each of these stages and see how they are treated under the rules of origin.

The terms "fiber forward," "yarn forward," and even "fabric forward" are popular, short-hand ways of discussing the basic rules of origin for textile and apparel goods under NAFTA. It is important to note that there are no legal definitions of these terms in the Agreement. These are concepts which apply to various textile sectors; *they are not rules*. As we discuss rules of origin for the following broad sectors of textile products, we will be using these terms to help understand the intent of the agreement. *But please do not treat these concepts as "rules" when making decisions about whether a good originates. There are just too many exceptions to these concepts for us to rely on them!*

Keeping that stern warning in mind, it is still helpful to define these terms, because almost all of the NAFTA Preference Rules for textiles fit one of these four types. So it's a good shorthand way to describe a given rule.

A "Fiber Forward" rule would be one that requires that the fiber must be formed in the NAFTA territory. In the case of natural fibers such as wool or cotton it would mean that they would have to be grown in the territory. In the case of man-made fibers, it would mean that they would have to be extruded in the territory.

A "Yarn Forward" rule would be one that requires that the yarn must be formed in the territory, i.e., it would mean that the yarn must be spun (or in the case of filament yarn, extruded) within the territory.

A "Fabric Forward" rule would require that the fabric must be formed (usually knitted or woven) in the territory.

A "Cut and Sewn" rule would require only that cutting and sewing of the finished article occur in the territory.

As we go through the Specific Rules we will see instances of each of these types.

C. Specific Rules Pertaining to Yarns

There is a "fiber forward" approach for most cotton and man-made fiber spun yarn and sewing thread. This means that the fiber itself must be created in the NAFTA territory. Filament yarns must be composed of filaments that are formed or extruded in a NAFTA country, but petrochemical or cellulosic feedstock that is used to make the filaments may be sourced outside NAFTA. Wool, silk and certain specialty yarns of chapter 56 require only a "single transformation" (i.e. they are spun within NAFTA, or "yarn forward").

The first step in determining whether a yarn (or any textile product) is originating is to *forget about* the "fiber forward" concept and look at the actual rule of origin in General Note 12 (t).

Look, for example, under HTS 5205 (cotton yarn with more than 85% cotton):

A change to headings 5201 through 5207 from any other chapter, except from headings 5401 through 5405 or 5501 through 5507.

Since cotton fibers and cotton yarn are in the *same* chapter, this rule indicates that a foreign fiber spun into yarn would not be an adequate change in tariff classification. Neither would a shift from the other two groups shown, which are man-made filaments and fibers.

Let's look at three examples of cotton yarns spun in Mexico:

Example 1:

Cotton yarn (HTS 5205) is spun in Mexico from fibers (HTS 5201) which wholly originate in Mexico.

Would this originate, and under what rule? This is a trick question in the sense that it is a product that is *wholly obtained or produced* in Mexico—Rule A. There is no need to look at the Specific NAFTA Preference Rules because we're still in Rule A, not Rule B. No change in tariff classification is required. This example simply reminds us that yarn spun from Mexican cotton can qualify.

Example 2:

Cotton yarn (HTS 5205) is spun in Mexico from fibers (HTS 5201) which are imported from Egypt.

Following the rule of origin for the yarn, note that a change in tariff classification from 5201 to 5205 is not sufficient. Therefore this yarn would not originate.

Example 3:

Blended yarn (5205.13) imported from Mexico consisting of 90% cotton fibers originating in Mexico, blended with 10% imported polyester staple fiber imported from Japan under HTS 5506.20.

In this case, the Japanese staple fibers fall within the range of nonallowable change in tariff classification, so this yarn does not originate either.

What if our last example were only 5% polyester? Remember the de minimis rule: fibers present in amounts of 7% or less need not undergo the change in tariff classification. Therefore such a yarn *would* originate.

Before we move on to fabrics, we should again point out that there are many exceptions to the so-called "fiber forward" rule for yarns, including wool yarns, silk yarns and certain specialty yarns such as chenille yarns. Always check the Specific NAFTA Preference Rules (HTSUSA General Note 12 (t)) to be sure.

D. Specific Rules Pertaining to Fabric

The negotiators' general approach in designing specific rules of origin for most fabric was "yarn forward", which means that fabric must be produced from yarn made in a NAFTA country in order to be "origi-

nating" and have full access to benefits of the agreement. But again, this is just a *guideline* and one always has to refer to General Note 12 (t) (the Specific NAFTA Preference Rules) for the specific requirement that applies to the good in question. There are many exceptions to the so-called "yarn forward" rule, such as for silk fabrics, which are fabric forward (fabric must be formed in the NAFTA territory), and certain special fabrics, which are fiber forward. But let's look first at a Specific Rule of Origin that *is* yarn forward:

A change to headings 5512 through 5516 from any heading outside that group, except from headings 5106 through 5110, 5205 through 5206, 5401 through 5404 or 5509 through 5510.

This is the rule for the whole group of woven man-made staple fiber fabrics, and it says that such fabric, in order to originate, *cannot* be made from foreign wool, cotton or man-made fiber yarns, or from man made filaments. But any other change is acceptable. In other words, the yarn must be formed (spun or extruded) in the NAFTA territory.

Let's look at a couple of examples of fabrics that fall under this rule:

Example 4:

Polyester fabric (HTS 5512.12) is woven in Mexico, from yarn (HTS 5509.21) that was spun in Mexico, from fibers that were made in and imported from Japan under HTS 5503.20.

This product qualifies because the change in tariff classification that occurred—foreign HTS 5503 fiber to HTS 5512 fabric—is allowed under the Specific Rule of Origin. That rule could be called "yarn forward" in the sense that the yarn has to be spun in the NAFTA territory.

Let's look at a variation on the theme, again for a fabric of heading 5512:

Example 5:

Polyester fabric (HTS 5512.12) is woven in Mexico, from yarn (HTS 5509.21) that was spun in Malaysia.

Here the change in tariff classification we are concerned with is 5509 yarn to 5512 fabric. Since that shift is *not* allowed under this rule, the fabric does *not* originate.

Without going into more obscure examples, we should again point out that for fabrics there are many exceptions to the so-called yarn forward rule. For instance silk or linen fabric can be knit or woven from foreign yarns, and certain specialty yarns such as metalized yarns and chenille yarns can be made into fabrics without regard to the yarn forward rule. So again, be careful when using the term "yarn forward"—it does not always work! As we have already said, check the Specific NAFTA Preference Rules (HTSUSA General Note 12 (t)) to be sure.

E. Specific Rules Pertaining to Apparel

The general intent of the rule of origin for apparel and other articles is the same as what we discussed for fabric (i.e. "yarn forward," or the yarn is spun or extruded in the NAFTA territory). And just as we did when talking about the fabric, at the risk of beating it to death, we must point out that yarn forward is just a guideline, there are many exceptions to this so-called "rule."

Many of the specific rules of origin for Chapter 61 and 62 require the same tariff classification change. Here is an example:

A change to headings 6105 through 6106 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308 or 5310 through 5311, chapter 54, or headings 5508 through 5516 or 6001 through 6002, provided that the good is both cut (or knit to shape) and sewn or otherwise assembled in the territory of one or more of the NAFTA parties.

This rule indicates that for a knit blouse to qualify as NAFTA originating, any wool yarns, cotton yarns, man-made fiber yarns, and most vegetable fiber yarns, and any blended yarns in chief weight of one of those fibers, must be spun or extruded in the NAFTA territory. This same list of HTS heading numbers appears over and over again in chapter 61 and 62. Chapter 62 has one additional group of numbers (pile, tufted or terry woven fabrics, as illustrated in the chart below).

The table on the following page summarizes which tariff changes are generally NOT sufficient to make a garment originating (subject to some exceptions which will be discussed below):

"NON-ALLOWABLE" TARIFF CHANGES FOR APPAREL	
For Chapter 61 & 62:	
Headings 5106-13	Wool yarn and woven fabric
Headings 5204-12	Cotton yarn and woven fabric
Headings 5307-08	Vegetable fiber yarn except flax
Headings 5310-11	Woven vegetable fiber fabric except linen
Chapter 54	All MMF filament fiber, yarn, & woven fabric
Headings 5508-16	MMF staple yarn and woven fabric
Headings 6001-02	All knit fabric
For Chapter 62 only:	
Headings 5801-02	Pile, tufted or terry woven fabrics

The table on this page shows which tariff changes ARE generally sufficient to make a garment originating (subject to some exceptions which will be discussed below):

"ALLOWABLE" TARIFF CHANGES FOR APPAREL	
Chapter 50	All fibers, yarns and woven fabric of silk
Headings 5101-05,	Wool fibers
Headings 5201-03	Cotton fibers
Headings 5301-06, 5309	Vegetable fibers and linen fiber, yarn & fabric
Headings 5501-07	MMF staple fibers
Headings 5602-03	Felts and nonwovens
Headings 5604-06	Rubberized, metalized, gimped, chenille, loop wale yarn
Headings 5804, 5806	Lace, net, narrow woven fabric
Headings 5809-11	Metalized woven fabric, embroidered or quilted fabric
Headings 5903, 5906	Plastic-coated and rubberized fabric

Keep in mind that these tables are just general guides and are by no means universal; always consult the Specific Rules to confirm what is gleaned from these tables.

In order to understand these rules, let's look at an example (refer to the Specific Rule of Origin for heading 6105-6106 on at the beginning of this section):

Example 6:

A knit blouse of heading 6105 is made in Mexico of 100% wool yarn that was imported from Korea.

This blouse would not originate because the wool yarn is classified in heading 5106, which is one of the excluded headings.

Example 7:

A knit blouse of heading 6105 is made in Mexico of 100% silk yarn imported from Korea

This silk blouse would originate, since the silk yarn, classified in heading 5004 is not one of the excluded headings.

As noted earlier, this is the general rule which covers most of the headings in chapters 61 and 62. There are a few exceptions. These in-

clude brassieres, certain knit intimate apparel and pajamas, and certain men's and boys' woven shirts.

We always have to read the Specific NAFTA Preference Rules very closely to see if any special notes apply. We should just take a look at General Note 12(t) and notice what special rules might be in effect for articles and apparel.

Chapters 61 and 62 each have three general rules that apply to certain garments.

The first concerns visible lining, and is rule 1 in both chapters:

A change to any of the following headings or subheadings for visible lining fabrics:

5111 through 5112, 5208.31 through 5208.59, 5209.31 through 5209.59, 5210.31 through 5210.59, 5211.31 through 5211.59, 5212.13 through 5212.15, 5212.23 through 5212.25, 5407.42 through 5407.44, 5407.52 through 5407.54, 5407.60, 5407.72 through 5407.74, 5407.82 through 5407.84, 5407.92 through 5407.94, 5408.22 through 5408.24 (excluding tariff items 5408.22.10, 5408.23.11, 5408.23.21 or 5408.24.10), 5408.32 through 5408.34, 5512.19, 5512.29, 5512.99, 5513.21 through 5513.49, 5514.21 through 5515.99, 5516.12 through 5516.14, 5516.22 through 5516.24, 5516.32 through 5516.34, 5516.42 through 5516.44, 5516.92 through 5516.94, 6001.10, 6001.92, 6002.43 or 6002.91 through 6002.93, from any other heading outside that group.

This rule applies only to those specific garments for which it is listed, and includes jackets, suits, coats, skirts, and ski suits. For these specific garments, the rule requires that in order to qualify as NAFTA originating, both the garment and its lining must qualify. The rules for lining require that the lining fabric be made in a NAFTA territory if the fabric is cotton, wool, and most man made fibers. Silk linings and vegetable fiber linings are not listed, therefore, in those cases, the lining fabric need not be considered.

Example 8:

A cotton skirt of heading 6204.52 that otherwise qualifies, has an acetate lining constructed from fabric of 5516.12 which was imported from Taiwan.

The Rule of Origin for heading 6204.52 states

A change to subheadings 6204.51 through 6204.53 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308 or 5310 through 5311, chapter 54, or headings 5508 through 5516, 5801 through 5802 or 6001 through 6002, provided that:

- (A) the good is both cut and sewn or otherwise assembled in the territory of one or more of the NAFTA parties, and
- (B) the visible lining fabric listed in chapter rule 1 for chapter 62 satisfies the tariff change requirements provided therein.

Part B of this rule requires the visible lining fabric to originate as defined in the lining rule (Chapter 61 rule 1), in order for the garment itself to qualify. Since the lining fabric does not meet this requirement (even though the outer part of the skirt meets its part of the rule), this skirt would not be considered originating.

Example 9:

A cotton skirt of heading 6204.52 that otherwise qualifies, has an acetate lining constructed from fabric of 5516.12 made in Mexico of acetate yarns imported from Taiwan. These yarns were classified in heading 5510.

In this case, the skirt would qualify as NAFTA originating, because the foreign yarn underwent the required tariff change in Mexico in the process of becoming the lining fabric.

Chapter 61 rule 2 and Chapter 62 rule 3 are also identical rules:

For purposes of determining the origin of a good of this chapter, the rule applicable to that good shall only apply to the component that determines the tariff classification of the good, and such component must satisfy the tariff change requirements set out in the rule for that good. If the rule requires that the good must also satisfy the tariff change requirements for visible lining fabrics listed in chapter rule 1 for this chapter, such requirement shall only apply to the visible lining fabric in the main body of the garment, excluding sleeves, which covers the largest surface area, and shall not apply to removable linings.

This rule is composed of two parts. The first part of this rule is concerned with garments made up of differing components; the other part contains additional information on linings. Since we have just been considering the topic of linings, we will look at the second part first. This rule contains several additional facts about linings:

The lining rules do not apply to removable linings.

If a lining is made up of more than one fabric, only the fabric of the main body of the garment is to be considered—sleeves are excluded.

If the main body of the garment, excluding sleeves, contains two or more different fabrics, the lining rule applies to the fabric that covers the greatest surface area.

Example 10:

An otherwise qualifying denim jacket of 6201.92.2031 is lined with a wholly Mexican cotton flannel (5209.32) in the main body of the garment and a Korean woven acetate lining in the sleeves.

The rule of Origin for subheadings 6201.91–6201.93 requires

A change to subheadings 6201.91 through 6201.93 from any other chapter, except from headings 5106 through 5113, 5204 through

5212.5307 through 5308 or 5310 through 5311, chapter 54, or headings 5508 through 5516, 5801 through 5802 or 6001 through 6002, provided that:

(A) the good is both cut and sewn or otherwise assembled in the territory of one or more of the NAFTA parties, and

(B) the visible lining fabric listed in chapter rule I for chapter 62 satisfies the tariff change requirements provided therein.

Because of part B of this rule, we must at least consider the lining rule. However, only the acetate sleeve lining is from a non-NAFTA source. Chapter 62 rule 3 says that we need not consider this lining because it is not in the main body of the garment. Hence, this jacket is originating.

The first part of Chapter 61 rule 2 (which is identical to Chapter 62 rule 3) concerns the origin determination of garments constructed from differing components. It states that "the rule applicable to the good shall only apply to the component that determines the classification of the good". By "component" the agreement means a *portion* of a garment or article; it does not refer to blended fibers or mixed yarns.

Example 11:

A dress constructed from a knit top and a woven skirt. The knit top is 100% cotton, which was grown, spun into yarn, and knit into fabric in Mexico. The woven skirt portion is 100% polyester, which was imported from Taiwan in fabric form.

If we assume that the essential character is provided by the knit portion, the dress would be classified in heading 6104.42.0010. The top portion meets the requirement of rule 12(b)(I) because it is wholly obtained or produced in the NAFTA territory. Although the imported polyester fabric would not meet the rule, it is ignored based on rule 2 in chapter 61 and rule 3 in chapter 62. Therefore, the dress would originate.

If we assume that the essential character is provided by the woven skirt portion, the dress would be classified in heading 6204.43.4030. The skirt portion would not meet the requirement of 12(t), because the change from polyester woven fabric to a dress is not acceptable. Therefore, the garment would not originate.

Finally, if we assume that neither portion determines the essential character, and the garment is classified based on GRI 3(c), the number that comes last in the tariff. Again, the dress would be classified in 6204.43.4030. Since the skirt portion determines the classification, as with the second part of the example, the dress would not originate.

This principle applies only to components, not to fibers or yarns. For a garment made from blended fibers or yarns, all yarns and all fibers must be considered.

Rule 3 of Chapter 61 is a stricter rule of origin for man-made fiber sweaters from Mexico:

For purposes of trade between the United States and Mexico, sweaters of subheadings 6110.30, 6103.23 or 6104.23, and sweaters

otherwise described in subheading 6110.30 that are classified as part of an ensemble in subheadings 6103.23 or 6104.23, shall be treated as an originating good only if any of the following changes in tariff classification is satisfied within the territory of one or more of the NAFTA parties:

(a) A change to tariff items 6110.30.10, 6110.30.15, 6110.30.20 or 6110.30.30 from any heading outside chapter 61 other than headings 5106 through 5113, 5204 through 5212, 5307 through 5308, 5310 through 5311, any heading of chapters 54 or 55 or headings 6001 through 6002, provided that the good is both cut (or knit to shape) and sewn or otherwise assembled in the territory of one or more of the NAFTA parties; or

(b) A change to subheading 6110.30 from any heading outside chapter 61 other than headings 5106 through 5113, 5204 through 5212, 5307 through 5308, 5310 through 5311, any heading of chapter 54, headings 5508 through 5516, or 6001 through 6002, provided that the good is both cut (or knit to shape) and sewn or otherwise assembled in the territory of one or more NAFTA parties.

This rule *overrides* the rules of origin for the specific HTS number. The rule of origin for U.S. or Mexican man-made fiber *sweaters* is *fiber forward* rather than *yarn forward*, which means that for the sweater to originate, the man-made *fibers* must originate in Mexico or the U.S.

The rule, as it is written in the HTS, however, is somewhat confusing because it only cites the HTS numbers to 8 digit, not the 10 digit classification for the sweaters. Therefore, when using this rule, keep in mind that it refers only to those garments classified at the statistical—10 digit level—as sweaters.

The rule also covers sweaters of synthetic fibers that are parts of ensembles, and classified in 6103.23 and 6104.23. The rule does not cover sweaters of artificial fibers that are part of an ensemble and classified in 6103.29 or 6104.29.

Note 2 to Chapter 62 lists some fabrics—velveteen, corduroy, Harris Tweed, and Batiste fabrics—which follow a “cut and sew” rule. This overrides the specific rules listed by HTS number in chapter 62:

Apparel goods of this chapter shall be considered to originate if they are both cut and sewn or otherwise assembled in the territory of one or more of the NAFTA parties and if the fabric of the outer shell, exclusive of collars or cuffs, is wholly of one or more of the following:

(A) Velveteen fabrics of subheading 5801.23, containing 85 per cent or more by weight of cotton;

(B) Corduroy fabrics of subheading 5801.22, containing 85 per cent or more by weight of cotton and containing more than 7.5 wales per centimeter;

(C) Fabrics of subheadings 5111.11 or 5111.19, if hand-woven, with a loom width of less than 76 cm, woven in the United Kingdom in accordance with the rules and regulations of the

Harris Tweed Association, Ltd., and so certified by the Association;

(D) Fabrics of subheading 5112.30, weighing not more than 340 grams per square meter, containing wool, not less than 20 per cent by weight of fine animal hair and not less than 15 per cent by weight of man-made staple fibers; or

(E) Batiste fabrics of subheadings 5513.11 or 5513.21, of square construction, of single yarns exceeding 76 metric count, containing between 60 and 70 warp ends and filling picks per square centimeter, of a weight not exceeding 110 grams per square meter.

This rule says that garments of these specific fabrics only have to be cut and sewn in one or more of the NAFTA territories. Thus, if a good is classifiable in Chapter 62 and is cut and sewn in one of the territories from one of these fabrics, the garment originates. These fabrics have been referred to as "Short Supply" fabrics because they are not produced in great quantities in the U.S. And the fact that they are in short supply here is the reason why garments made of these fabrics have a liberal "cut and sew" rule rather than the general "yarn forward" rule.

Of course, all of the above examples we've been going through illustrate Rule B of the NAFTA Preference Rules. That is what we'll be spending most of our time on. But a textile product might also qualify under Rule C.

To review, rule C states:

they are goods produced entirely in the territory of Canada, Mexico and/or the United States exclusively from originating materials; thus, if you have a raw material, an intermediate product, and a final product, the final product will qualify if the intermediate product, by its rule of origin, becomes an originating good.

Example 12:

Men's jacket of coated fabric. Knit fabric of heading 6002 is imported into Mexico from Korea. In Mexico, the fabric is coated, and becomes a fabric of heading 5903. The fabric is then cut and sewn into a jacket in Mexico. The Jacket is classified in heading 6113.

The tariff shift requirement for heading 6113 is:

A change to headings 6113 through 6117 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308 or 5310 through 5311, chapter 54, or heading 5508 through 5516 or 6001 through 6002, provided that the good is both cut (or knit to shape) and sewn or otherwise assembled in the territory of one or more of the NAFTA parties.

According to this rule, the change from knit fabric of 6002 to a jacket of 6113 is not an acceptable tariff shift. Rule B is not applicable. Howev-

er, in this case, there is an intermediate product—the coated fabric. The rule for the coated fabric classified under heading 5903 is:

A change to headings 5903 through 5908 from any other chapter, except from headings 5111 through 5113, 5208 through 5212, 5310 through 5311, 5407 through 5408 or 5512 through 5516.

Under this rule, a change from the imported fabric classified under heading 6002 to coated fabric of 5903 would result in the coated fabric being an originating good. Based on rule C, the final product, the jacket, would also originate.

In the textile and apparel chapters, this type of example is rare. The originating rules are written, in general, so that both the intermediate products and final products have similar rules.

F. Specific Rules Pertaining to Articles

Knowing the general “yarn forward” approach to apparel, we can look at other articles and see that the pattern is generally (but not always) the same. Let’s look at examples of some specific products.

Example 13:

Curtains (HTS 6303.12) are cut and sewn from fabric (HTS 6002.43) which is knitted in Canada from yarns (HTS 5509.21) spun in Mexico from polyester fiber (HTS 5503.20) imported from China.

The Specific Rule of Origin states:

A change to heading 6303 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308 or 5310 through 5311, chapters 54 through 55, or headings 5801 through 5802 or 6001 through 6002, provided that the good is both cut (or knit to shape) and sewn or otherwise assembled in the territory of one or more of the NAFTA parties.

Reading the rule and trying to apply it to this curtain, we realize that the key shift here—from 5503 fiber to 6303 curtains—is *not* allowed under this rule. So in effect, at least for curtains of man-made fibers, the rule is *fiber forward*, not yarn forward. The fibers would have to be extruded in the NAFTA territory in order for these curtains to originate. This differs from the rule for apparel we looked at earlier—that rule *would* have allowed a shift from fiber to finished good. This points up the importance of always consulting the Specific Rule of Origin in HTSUSA General Note 12(t).

The only way these curtains could qualify under this rule, it would appear, would be if the resins (chapter 39 plastics), which are used to make the polyester fiber, were imported.

In the Specific NAFTA Preference Rules for chapter 57 (carpets), just as for the sweaters, there are stricter rules of origin for carpets from Mexico:

A change to headings 5701 through 5705 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5308

or 5311, chapter 54, or headings 5508 through 5516; provided that for purposes of trade between the United States and Mexico, a good of chapter 57 shall be treated as an originating good only if any of the following changes in tariff classification were satisfied within the territory of one or more of the parties:

(a) A change to subheadings 5703.20 or 5703.30 or heading 5704 from any heading outside chapter 57 other than headings 5106 through 5113, 5204 through 5212, 5308, 5311 or any headings of chapters 54 or 55; or

(b) A change to any other heading or subheading of chapter 57 from any heading outside that chapter other than headings 5106 through 5113, 5204 through 5212, 5308, 5311, any heading of chapter 54 or headings 5508 through 5516.

In a nutshell, this rule says:

The rule of origin for U.S. or Mexican man-made fiber *tufted* or *felt* carpets is *fiber forward* rather than *yarn forward*, which means that for the carpet to originate, the man-made *fibers* must originate in Mexico or the U.S.

Example 14:

A tufted carpet (HTS 5703.20) is made in Mexico from a Malaysian jute fabric (HTS 5310.10) which is tufted (in Mexico) with yarn (HTS 5509.11) that is spun in the U.S. from Taiwanese nylon staple fibers (HTS 5503.10).

Considering just the first part of the rule of origin (see above), this carpet would appear to be originating. The two foreign materials, Malaysian fabric of 5310 and Taiwanese fibers of 5503, are not among the exceptions listed within the origin rule.

However, for trade between Mexico and the U.S., we now know that there is a special rule which applies to subheading 5703.20, which does *not* allow fiber of 5503—as we said, the effect of this new rule was to make this type of carpet “fiber forward” instead of yarn forward. Hence, under this special rule the carpet is non-originating.

3. Country of Origin Rules for Textile and Apparel Products

A. New Country of Origin Rules (Section 102.21, CR)

Following the U.S. legislation that implemented the Uruguay Round of trade agreements, there are entirely new country of origin rules for textiles effective July 1, 1996. These rules determine country of origin for all countries (excluding Israel, but including the NAFTA countries), for purposes of marking, duty rate determination, applicability of Merchandise Processing Fee (MPF) and quota/visa determination.

We would use the Country of Origin rules in cases where the goods do originate, but where we still need to determine the country of origin to determine what duty rate (Mexico or Canada) applies. We *also* use these rules to determine the country of origin of any good, from any country except Israel, for purposes of marking, duty rate determination, appli-

cability of the Merchandise Processing Fee (MPF), and for determining whether quota and visa requirements apply (see exceptions discussed under "C. NAFTA Preference Override" and "D. U.S. Goods Sent Abroad for Processing," below).

Let's take a look at the regulations which implement these rules, as they now exist in new section 102.21, CR:

(C) General rules. Subject to paragraph (d) of this section, the country of origin of a textile or apparel product shall be determined by sequential application of paragraphs (c)(1) through (5) of this section and, in each case where appropriate to the specific context, by application of the additional requirements or conditions of § 102.12 through 102.19 of this part.

(1) The country of origin of a textile or apparel product is the single country, territory, or insular possession in which the good was wholly obtained or produced.

(2) Where the country of origin of a textile or apparel product cannot be determined under paragraph (c)(1) of this section, the country or origin of the good is the single country, territory, or insular possession in which each foreign material incorporated in that good underwent an applicable change in tariff classification, and/or met any other requirement, specified for the good in paragraph (e) of this section.

(3) Where the country of origin of a textile or apparel product cannot be determined under paragraph (c)(1) or (2) of this section:

(i) If the good was knit to shape, the country of origin of the good is the single country, territory, or insular possession in which the good was knit; or

(ii) Except for goods of heading 5609., 5807, 5811, 6213, 6214, 6301 through 6306, and 6308, and subheadings 6209.20.5040, 6307.10, 6307.90 and 9404.90, if the good was not knit to shape and the good was wholly assembled in a single country, territory, or insular possession, the country of origin of the good is the country, territory, or insular possession in which the good was wholly assembled.

(4) Where the country of origin of a textile or apparel product cannot be determined under paragraph (c)(1), (2) or (3) of this section, the country of origin of the good is the single country, territory, or insular possession in which the most important assembly or manufacturing process occurred.

(5) Where the country of origin of a textile or apparel product cannot be determined under paragraph (c)(1), (2), (3) or (4) of this section, the country of origin is the last country, territory, or insular possession in which an important assembly or manufacturing process took place.

(d) *Treatment of sets.* Where a good classifiable in the HTSUS as a set includes one or more components that are textile or apparel products and a single country of origin for all of the components of the set cannot be determined under paragraph (c) of this section, the country of origin of each component of the set that is a textile or

apparel product shall be determined separately under paragraph (c) of this section.

**SHORTHAND VERSION OF
COUNTRY OF ORIGIN RULES FOR TEXTILES:**

- C1: Wholly obtained or Produced**
- C2: Tariff Change or Other Change**
- C3i: Country where Knit to Shape**
- C3ii: Country where Wholly Assembled**
- C4: Country of Most Important Assembly or Manufacturing**
- C5: Country of Last Important Assembly or Manufacturing**
- D: "Set" Rule**

The first thing to notice is that the NAFTA marking rules of sections 102.12 through 102.17 and 102.19, in some cases, apply to textiles for which section 102.21 is being used. Keeping this in mind, we will look at the rules themselves.

The first Country of Origin Rule, C1, is the most obvious. If a good is wholly obtained or produced in one NAFTA country, that country is the country of origin.

Rule C2 says that if there are foreign materials, the country of origin is the country in which each of those materials underwent a specified change in tariff classification, or any other specified change. We say "any other specified change" because not all of the Specific Country of Origin Rules are in terms of changes in tariff classification. For instance, for embroidery without visible ground of subheading 5810.10, the rule states,

The country of origin of goods of subheading 5810.10 is the single country, territory or insular possession in which the embroidery was performed.

Most rules, however, do specify specific changes in tariff classification that are required. But none of them require Regional Value Content.

Example 15:

Textile covered rubber thread classified in heading 5604. The product was made in Mexico from Taiwanese staple fiber synthetic yarn of HTS 5509 and Malaysian rubber thread of HTS 4007.

The Specific Country of Origin Rule for goods of heading 5604 states:

If the textile component is of staple fibers, a change of those fibers to heading 5604 from any other heading, except from heading 5004 through 5006, 5106 through 5110, 5204 through 5207, 5306

through 5308, and 5508 through 5511, and provided that the change is the result of a spinning process.

The country of origin is Taiwan based on Country of Origin Rule C2.

The remaining rules tell us, *in sequence*, what to do *only if after applying rules C1 and C2 we still can't determine the country of origin*.

Rule C3 Has two parts, C3i and C3ii. C3i says that if the good was knit to shape, the country of origin is the country where the good was knit.

Example 16:

A ladies' acrylic sweater of heading 6110 is made in Mexico from sleeves and a body knit to shape in China, and other minor parts made in Mexico. All of the parts are classified in heading 6117.

Obviously this good is not wholly obtained or produced in one country, so rule C1 does not apply. Considering rule C2, the pertinent part of the Specific Country of Origin Rule for heading 6110 reads:

If the good is knit to shape, a change to heading 6101 through 6117 from any heading outside that group, provided that the knit-to-shape components are knit in a single country, territory or insular possession.

The sweater fails to meet the rule, because the Chinese knit-to-shape components are classified within the excepted group. Therefore based on rule C3i, the country of origin is China, the country where the parts were knit to shape.

C3ii, the next rule to consider, says that, except for certain listed products, the country of origin is the single country where the goods were wholly assembled. This rule does not apply to knit-to-shape products. The tariff shift rules (Rule C2) have been structured to catch, to the extent possible, all assemblies that would confer origin. But if there is an assembly that is not covered by the tariff shifts, then rule C3ii would apply.

Rule C4 covers the case where applying the preceding rules does not result in a single country of origin. Popularly called the "most important country" rule, it states that the country of origin is where the "most important" assembly or manufacturing process took place.

Example 17:

A quilt (9404.90.8505) is assembled in Mexico from a patchwork fabric made in China, a plain backing fabric made in Singapore, and batting made in Taiwan.

This good would not be wholly obtained or produced. Considering rule C2, the Specific Country of Origin Rule for this product states:

The country of origin of a good classifiable in subheading 9404.90 is the country, territory or insular possession in which the fabric comprising the good was formed by a fabric-making process.

The good fails to meet this rule because of the dual sources for the fabric. Rule C3i does not apply because this good is not knit to shape, and rule C3ii does not apply because the good is not *wholly* assembled in one country. Following rule C4, we must decide where the "most important" assembly or manufacturing process took place. Since the most important process in this example is the production of the patchwork material that forms the top side of this quilt, the quilt is a Chinese product regardless of the subsequent processing in Mexico, following Country of Origin Rule C4.

Rule C5 covers the case where you cannot say that the "most important" assembly took place in one country. In other words, two or more operations are considered to be most important, but neither is more important than the other. In such a case, the "last important country" rule states that the country of origin is the last country in which an important assembly or manufacturing process took place.

Example 18:

A pillow shell (6307.90.8945) is made from one piece produced and cut in China and an identical piece produced and cut in Hong Kong. The two equally-sized cut pieces are sewn together on three and a half sides in Mexico to form the shell.

Based on Rule C5, the country of origin is Mexico, the country in which the last important assembly or manufacturing process took place.

There are several other special considerations to be aware of, that apply to the Country of Origin Rules. These involve the treatment of sets, the "NAFTA Preference Override," and U.S. goods sent abroad for processing:

B. Sets

If one or more components in a set are textile articles and there is no single country of origin for these components, the country of origin for each textile component of the set is determined separately. A composite good will continue to be considered as one combined good.

C. NAFTA Preference Override

Any NAFTA preference override rules currently in existence will continue to be applied if a NAFTA preference is claimed. (Note: portions of the regulations dealing with this issue were not yet finalized at the time of publication. Readers should refer to the final version of 19 CFR 102.12-102.19.)

Example 19:

China is the country of origin of comforter shells and also the country of origin of down used to fill the shells. Both of these components are sent separately to Canada where the down is inserted into the shells and the comforter finished.

In this example, applying the rules in section 102.21, China would be the country of origin of the finished comforter. However, the NAFTA marking rules provide for an override rule that applies if a NAFTA duty preference claim is made. Under the facts in this example, the processing in Canada (a NAFTA country) satisfies the NAFTA Preference Rules. Therefore, if a claim is made for NAFTA preference at the time of entry (or within one year), the country of origin is Canada. The NAFTA Preference Rule overrides the new country of origin rules in determining the country of origin for NAFTA products.

D. U.S. Goods Sent Abroad for Processing

When U.S. produced textile goods are sent abroad for processing and are advanced in value:

- a. Note 2(a) to Chapter 98, Subchapter 2 applies for duty assessment;
- b. Customs Regulation 12.130(c) applies for quota and visa purposes; and
- c. Customs Regulation 12.130(c) also applies for marking purposes; however, Customs is currently reconsidering this particular issue.

(Note: portions of the regulations dealing with this issue were not yet finalized at the time of publication. Readers should refer to the final version of 19 CFR 102.12-102.19.)

4. Mexican Special Regime

The benefits of Mexican Special Regime are that the goods are not subject to an absolute quota or to visa requirements, and that they are duty free. At least at the beginning of NAFTA when the staged rate reductions (and MPF for Mexico) are in effect, this benefit may be greater than for goods that actually originate. These benefits only apply to goods assembled in Mexico. An example at the end of this section illustrates this point.

Some of the new features of Special Regime, that differ from the prior program are:

- There is a new HTS # 9802.00.9000.
- The program now applies to *all* textile products.
- There are some post-assembly processes which were not previously allowed that are now allowed.

The basic requirements for Mexican Special Regime can be found in HTS 9802.00.9000, cited in the box at the top of the next page.

The Mexican Special Regime has the following requirements:

- the product must be assembled in Mexico
- the fabric must be wholly formed in the U.S., in other words, the yarn must be either knitted, woven or otherwise constructed (spunbonded) into fabric. That means that foreign greige fabric that is printed and dyed, then cut in the U.S. does not qualify
- the fabric must be cut into components in the U.S.

9802.00.9000

Textile and apparel goods, assembled in Mexico in which all fabric components were wholly formed and cut in the United States, provided that such fabric components, in whole or in part,

(a) were exported in condition ready for assembly without further fabrication,

(b) have not lost their physical identity in such articles by change in form, shape or otherwise, and

(c) have not been advanced in value or improved in condition abroad except by being assembled and except by operations incidental to the assembly process;

provided that goods classifiable in chapters 61, 62 or 63 may have been subject to bleaching, garment dyeing, stone-washing, acid-washing or perma-pressing after assembly as provided for herein.

The components, in whole or in part, must:

- be exported in condition ready for assembly without further fabrication;
- have not lost their physical identity in such articles by change in form, shape or otherwise, and
- have not been advanced in value or improved in condition abroad except by being assembled and except by operations incidental to the assembly process

One of the beneficial changes concerns post production procedures. Under Special Regime, a textile article may be bleached, garment dyed, stone washed, acid washed, enzyme washed or permanently pressed after assembly. These processes disqualified an article under the prior Special Regime program.

Some of the prior requirements, mostly procedural, are still in place:

- Importers will be obligated to keep on file proof that the fabric is U.S. formed (yarn made into fabric in the U.S.).
- Accurate records must be maintained to show the amount of cut components exported and the finished goods imported.
- The requirement that the cost of findings, trimmings and certain elastic strips of foreign origin do not exceed 25% of the cost of the components of the assembled product, remains unchanged.

Procedural differences:

- ITA-370P form is not required for goods classified under HTS number 9802.00.9000
- In order to participate, an importer must certify that the finished goods are sewn in Mexico from U.S. formed and cut fabric.

Example 20:

Scenario I: A woman's cotton knit blouse originates under the NAFTA. It is sewn in Mexico from components which were cut in Mexico from 100% U.S. fabric (cotton was grown in the U.S.; it was spun into yarn and knit into fabric in the U.S.).

Since the blouse originates, there are no quota/visa restrictions. However, this falls into a staged rate reduction and at the present would be subject to a reduced rate. Currently, the column 1 rate is 20.9%—the NAFTA rate is 13.2%. Also, since under section 102.21, CR the country of origin is Mexico, this garment will be subject to the MPF, which continues until 1999 for goods of Mexico.

Example 21:

Scenario II: The above blouse is sewn in Mexico from components *formed and cut in the U.S.* and exported in accordance with the provisions of the Mexican Special Regime Program.

It would still be an originating blouse, however, it also meets the requirements of special regime. Therefore, instead of a duty rate of 13.2%, it would be duty free, and exempt from MPF as an article provided for under chapter 98 (only 9802.0060 and 9802.0080 are excluded from this exemption).

Example 22:

Scenario III: The yarn in the above blouse is imported from outside the NAFTA territory, but was knit in the U.S., cut into components in the U.S. and sewn in Mexico.

The garment would not originate, so if Special Regime did not exist, the blouse would be subject to a 20.9% duty rate. In addition, the blouse would be subject to an absolute quota. Instead, because the fabric was made and cut in the U.S., this blouse qualifies for special regime. It would not be subject to quota and would be free of duty and MPF.

5. Tariff Preference Levels (TPLS)

There are three conditions or requirements for a good to qualify for a reduced rate under the TPL's:

- it has to meet the qualifications set out in Section XI, additional U.S. notes 3-6;

- it must be accompanied by a certificate of eligibility; and
- it must be within the annual quantity limits set out in Section XI, additional U.S. note 3, 4 or 5 depending on the good.

The specific rules are broken out as follows:

- Note 3 covers apparel and certain textile articles
- Note 4 covers certain fabric and made-up articles
- Note 5 covers certain yarns

SHORTHAND VERSION OF TPL's

CA apparel cut or knit to shape & sewn.

MX apparel cut or knit to shape & sewn, except for certain:

blue denim or oxford cloth,
MMF sweaters,
certain garments of circular knit fabric.

MX apparel/articles assembled from U.S. cut fabric, except for certain:

blue denim or oxford cloth,
MMF sweaters,
certain garments of circular knit fabric.

CA or MX cotton or MMF fabric, or made-up articles.

CA or MX spun cotton or spun MMF yarns.

Each rule contains separate requirements for Canada and Mexico and separate quantity levels for each country. For Mexico there is an additional rule and a separate quantity for apparel and some articles assembled in Mexico from fabric cut in the U.S.

Specifically, the rules are:

- For apparel from Canada the qualifying rule is the garment must be cut or knit to shape and sewn or otherwise assembled in Canada from foreign fabric or yarn [Note 3(a)]
(The specific quantity level for goods qualifying under this rule is found in Note 3(f).)
- For Mexican apparel, the qualifying rule is the garment must be cut or knit to shape and sewn or otherwise assembled from foreign fabric or yarn [Note 3(b)]. Exceptions:
blue denim over 200 grams e.g., denim jackets and jeans
woven oxford fabric of an average yarn number less than 135 metric number e.g., men's dress shirts
mmf sweaters
certain garments of circular knit fabric of yarn number equal to or less than 100 metric number e.g., cotton and mmf underwear, T-shirts, tank tops, also pajamas (fine knit)

A garment made from these fabrics, even if the garment is cut and sewn in Mexico, would *not* qualify for TPL. These exceptions are spelled out in detail in notes 3 (d) and (e).

(Quantity levels allowed for this TPL are found in Note 3(g)(I))

- For Mexico there is a separate TPL established for apparel *and certain textile articles* that are sewn or otherwise assembled in Mexico under HTS 9802.00.8055. This is for foreign fabric cut in the U.S. and exported to Mexico for assembly. There are certain exceptions, the same exceptions as noted above. If a TPL fills for this HTS number merchandise must be entered under HTS 9802.00.8065. (see Section XI, additional U.S. Note 3(c)). (Quantity limits for this TPL can be found in note 3(g)(ii))
- Note 4 covers cotton or man-made fiber fabric or made-up articles classified in Chapters 52-55, 58, 60 and 63 that are woven or knit in Mexico or Canada from foreign spun yarns. This note also applies to articles of HTS# 9404.90 (bedding) that are finished and cut and sewn or otherwise assembled from foreign fabrics.
- Note 5 covers spun cotton and spun mmf yarns. Each of these rules indicates certain exceptions.
- There is a special arrangement with Canada for reporting TPL's that apply for fabric and made-up textiles.
- For textile articles that are not qualifying because certain non-originating textile materials do not undergo the applicable change in tariff classification as set out in the Agreement, but where such materials are 50% or less by weight of the materials of that textile article, only 50% of the square meter equivalent (SME) is to be charged to the TPL. If over 50%, then 100% of the SME will be charged (see Section XI, additional U.S. Note 4(c)).

Example 23:

A man's pair of trousers (6103.41) constructed in Mexico from Italian knit fabric, 70% wool, 30% polyester.

This garment is *not* originating because the basic Rule of Origin was yarn-forward. However, in light of the TPL rules, if a good classified in Chapters 61 and 62 is *both cut (or knit to shape) and sewn or otherwise assembled* in Mexico from foreign fabric or yarn, it can be entitled to TPL treatment. The exceptions to this rule spelled out in Note 3(d) and 3(e) do not apply. So these trousers which are nonoriginating, are entitled to the lower NAFTA rates, up to the TPL limit that has been set.

Procedural Requirements

The claim for Tariff Preference Level will be based upon a Certificate of Eligibility:

- Mexican and Canadian governments must issue a certificate of eligibility
- Do not confuse this with the documentation required for goods considered to be originating. The certificate of eligibility is issued by the foreign government, the certificate of origin is not.
- Without this certificate non NAFTA qualifying textile merchandise will be dutiable at the column 1 rate.

In those cases where an absolute quota and TPL exist for Mexico, the certificate of eligibility must be presented with the entry/entry summary as well as the visaed commercial invoice. In column 34 of the CF 7501, only the visa number should appear.

When a certificate of eligibility is submitted with the entry/entry summary the appropriate Chapter 99 number or 9802.00.8055, as well as the certificate of eligibility number must appear on the CF 7501 in column 34.

Schedule 3.1.3 of Annex 300B "Conversion Factors" provides for conversion factors to obtain Square Meter Equivalents (SME) for various products for purposes of the TPL's.

6. Documentation

A. Exporter's Certificate of Origin

The exporter's certificate of origin must be completed for any textile product for which a NAFTA claim is made, and need not be filed with the entry package. It must be in the possession of the importer at the time the NAFTA claim is made, and available upon Customs' request.

B. Textile Country of Origin Declaration

The textile country of origin declaration, which is currently required on all textile importations, continues to be a requirement for entry on textile imports from either Canada or Mexico. It must be filed with the entry package. For merchandise that is claimed as NAFTA qualifying, the textile declaration must be signed by the exporter or producer.

Further Information

The Customs Electronic Bulletin Board (CEBB) is an automated system which provides the entire trade community with current, relevant information regarding Customs operations and items of special interest. It was established as another effort to promote the Customs Service as "trade friendly" within the importing and exporting community. The CEBB posts timely information including proposed regulations, news releases, Customs publications and notices, etc. which may be "downloaded" to your own PC. The Customs Service does not charge the public to use the CEBB. You only pay telephone charges. To use the CEBB, you must have a personal computer with a modem. The CEBB supports modem speeds from 2400 to 28,800 baud. Set tip your terminal as ANSI,

set databits to 8, set parity to N and stopbits to 1. Dial (703) 440-6155 and log on with your name and choose a password. After a few questions, you are set to get up-to-date information from Customs. If you have any questions about the CEBB, call (703) 440-6236.

Additional information may be obtained from Customs ports of entry. Please consult your telephone directory for a Customs office near you. The listing will be found under U.S. Government, Treasury Department.

Customs Regulations

The current edition of *Customs Regulations of the United States* in loose-leaf format is available by subscription from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. The bound 1996 Edition of Title 19, *Code of Federal Regulations*, which incorporates all changes to the *Customs Regulations* from April, 1995 through March, 1996 will be available for sale from the same address.

The information provided in this publication is basic and is for general information purposes only. Recognizing that many complicated factors may be involved in customs classification or valuation issues, an importer may wish to obtain a ruling under Customs Regulations, 19 C.F.R. Part 177, or obtain advice from an expert (such as a licensed Customs Broker, attorney or consultant) who specializes in Customs issues. Reliance solely on the general information in this pamphlet may not be considered reasonable care.

What Every Member of the
Trade Community Should Know About:

Textile & Apparel Rules of Origin



A Basic Level
Informed Compliance Publication of the
U.S. Customs Service

October, 1996

PREFACE

On December 8, 1993, Title VI of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), which is also known as the Customs Modernization Act or "Mod Act," became effective. These provisions amended many sections of the Tariff Act of 1930 and related laws. Two new concepts which emerge from the Mod Act are "*informed compliance*" and "*shared responsibility*." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the Mod Act imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act, as amended, (19 U.S.C. § 1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met. The Customs Service is then responsible for fixing the final classification and value of the merchandise. The failure of an importer of record to exercise reasonable care may lead to delay in the release of merchandise or the imposition of penalties.

In order to provide information to the public, Customs intends to issue a series of informed compliance publications, and videos, on topics such as value, classification, entry procedures, determination of country of origin, marking requirements, intellectual property rights, recordkeeping, drawback, penalties and liquidated damages.

The Offices of Field Operations, Strategic Trade and Regulations and Rulings originally prepared the material in this publication for internal Customs use, but are distributing it to the public as one in a series of informed compliance publications. It is hoped that this material, together with seminars and increased access to Customs rulings, will help the trade community in improving voluntary compliance with the Customs laws.

The information provided in this publication is for general information purposes only. Recognizing that many complicated factors may be involved in customs classification and origin issues, an importer may wish to obtain a ruling under the Customs Regulations, 19 CFR Part 177, or obtain advice from an expert (such as a licensed Customs Broker, attorney or consultant) who specializes in such Customs issues. Reliance solely on the general information in this pamphlet may not be considered reasonable care.

Comments and suggestions are welcomed, and should be addressed to me at the Office of Regulations and Rulings, U.S. Customs Service, 1301 Constitution Avenue, NW (Franklin Ct. Bldg), Washington, DC 20229.

STUART P. SEIDEL,
Assistant Commissioner,
Office of Regulations and Rulings.

TABLE OF CONTENTS

(Note to persons downloading this document electronically: pagination and formatting may vary depending on the printer and word processing software used)

INTRODUCTION	86
EFFECTIVE DATE	86
PRE-EXISTING CONTRACTS	86
COVERAGE	86
PRINCIPLES BEHIND THE RULES	87
(1) General Rules	87
(A) Wholly obtained or produced	87
(B) Yarn, Including Single and Multiple Yarns	87
(C) Fabric	87
(D) All Other Textile Products	88
(2) Special rules	88
Specified Harmonized Tariff System (HTS) classifica-	
tions	88
Articles Produced from Yarns	88
Articles Produced From Fabric	88
Knit-to-shape	89
(3) Multi-country Rule	89
Most important assembly or most important manufac-	
turing	89
If the most important assembly or manufacturing	
process cannot be determined	89
HIERARCHY OF RULES	90
Wholly produced	90
Requisite tariff shift	90
Knit-to-shape	91
Wholly assembled	91
Most important assembly or manufacturing process	91
Last country in which an important assembly or manufac-	
turing process occurs	91
SPECIAL EXCEPTIONS & CONSIDERATIONS	92
Israel Free Trade Agreement	92
Insular Possessions	92
Components Cut in the U.S. from Foreign Fabric and	
Assembled Abroad	92
NAFTA Override	93
U.S. Goods Sent Abroad For Processing	93
Sets	93
SUMMARY OF RULES	94
TEXTILE DECLARATION AND QUOTA CHARGE STATE-	
MENT	94
FAILURE TO FOLLOW THE ORIGIN RULES	94

SUMMARY OF ISSUED RULINGS	94
ADDITIONAL INFORMATION	95
Customs Electronic Bulletin Board	95
The Internet	95
Customs Regulations	95
Customs Bulletin	96
VideoTapes	96
Informed Compliance Publications	96
Other Publications	96
APPENDIX	Appendix-98

RULES OF ORIGIN FOR TEXTILE AND APPAREL PRODUCTS

INTRODUCTION

Section 334 of the Uruguay Round Agreements Act (Pub. L. 103-365, codified as 19 U.S.C. § 3592) established rules of origin for textile and apparel products which are imported into the Customs Territory of the United States. Except as otherwise provided by statute, these rules apply for purposes of the Customs laws and the administration of quantitative restrictions (quotas). The law required the Secretary of the Treasury to promulgate implementing regulations, which appear as section 102.21 of the Customs Regulations (§ 102.21 CR, 19 CFR § 102.21).

This publication was adapted from material which was originally prepared to help Customs Attachés in foreign countries interpret and explain the § 334 rules of origin to manufacturers and exporters. It has answers to many of the questions which Customs headquarters has been receiving from both Customs field personnel and the trade. While it is only a guide, this publication provides the basis of the rules in a format which should be useful to importers and exporters. For that reason we are making the material available not only to Customs personnel, but to the trade as well.

It must be remembered that this publication does not supersede any Customs laws, regulations or rulings and should only be used as a general guide. If there are any technical questions, they should be addressed to the Tariff Classification Appeals Division of the Office of Regulations and Rulings or to the National Import Specialist responsible for the particular commodity. Addresses for these offices appear in the material which follows.

EFFECTIVE DATE

The country of origin rules apply to textile and apparel products (see below for coverage) **entered, or withdrawn from warehouse, for consumption on or after July 1, 1996**. This date is set by law and does not provide for a grace period, shipments on the water, time entered into the port limits, entry rejects or any other exceptions except for certain pre-existing contracts entered into prior to July 20, 1994 which were required to be filed with the Commissioner of Customs.

PRE-EXISTING CONTRACTS

All contracts to be considered for an 18-month grace period had to be submitted within 60 days after enactment of the Act. Action has been completed on all contracts that were filed. All manufacturers who submitted such contracts have already been notified of the status of their contracts.

COVERAGE

In addition to the textile items found in Chapters 50 through 63 of the Harmonized Tariff System (HTS) classifications and any other HTS classifications with category numbers, the following textile items in the

HTS classifications listed below also have been defined by the World Trade Organization as textile and apparel products and are subject to the § 334 country of origin rules for textile and apparel products:

3005-	Nonadhesive wadding, gauze bandages
3921-	PVC and PU sheets, film, etc.
4202-	Luggage, handbags, etc.
6405, 6406-	Footwear of textiles
6501-6505-	Headwear of textiles
6601-	Umbrellas
7019-	Fiberglass yarns and fabrics
8708-	Automobile seat belts
8804-	Parachutes
9113-	Watch straps
9404-	Comforters, quilts, pillows
9502-	Doll clothing
9612-	Typewriter ribbons

The specific classifications of the above products up to 10 digits can be found in the Federal Register, Vol. 60, No. 171, September 5, 1995, page 46198, and in § 102.21(e) CR, (19 CFR § 102.21(e)).

PRINCIPLES BEHIND THE RULES

(1) GENERAL RULES

In general, except as otherwise provided for by law, a textile or apparel product, for purposes of the Customs laws and the administration of quantitative restrictions originates in a country, territory or insular possession according to the following rules:

(A) Wholly obtained or produced

The country of origin is the country in which a product is **wholly obtained or produced** when a textile or apparel product is completely produced or manufactured (except for *de minimus* materials as defined in 19 CFR § 102.13) in one country.

(B) Yarn, Including Single and Multiple Yarns

The country of origin of yarn, thread, twine, cordage, rope, cable or braiding is:

- (i) **STAPLE** yarn, etc.—the country in which **yarn is spun**
- (ii) **FILAMENT** yarn, etc.—the country in which **filament is extruded**
- (iii) **PLIED, IMPED AND CABLED** yarns, etc.—the country in which the fibers or filaments used in the yarn are **spun or extruded**

(C) Fabric

The country of origin of a **FABRIC** is the country in which the fabric is **woven, knitted, needled, tufted, felted, entangled or created by any other fabric making process**. (NOTE: A fabric making process is any process that results in a fabric being created).

NOTE: The country of origin of **QUILTED FABRICS** is the country in which the fabrics are formed (one of the specific exceptions listed below).

NOTE: In the § 334 country of origin rules, objective tariff shifts are substituted for substantial transformation. Therefore, based on these statutory provisions, dyeing and/or printing or other finishing processes applied to fabrics do not confer or change the country of origin.

(D) All Other Textile Products

The country of origin of all other textile and apparel products is the country in which the components of a textile or apparel product are **wholly assembled** (except for minor attachments such as buttons, beads, spangles, embroidery, etc., or minor subassemblies such as collars, cuffs, pockets, plackets, etc.)

NOTE: The rules generally provide that processing operations or assembly (particularly for apparel), not cutting components or cutting and hemming as in the past, confers country of origin (however, see pre-existing contracts above and the Israel and insular possession exceptions below).

(2) SPECIAL RULES

- (A) Special rules govern the articles in the following 16 specified Harmonized Tariff System (HTS) classifications** (the HTS classification is followed by a general description):

(i) Articles Produced from Yarns

5609- the country of origin of articles made from yarn, strips, twine, cordage, rope or cables is the country in which the yarn, etc., is produced.

(ii) Articles Produced From Fabric

The country of origin of certain articles made from fabric in the following Harmonized Tariff System classifications is the country in which the fabric is produced:

5807- Labels, badges, emblems

5811- Quilted textile products in the piece, or lengths or rolls of quilted fabrics to be cut and hemmed

6209.20.5040- Baby diapers

6213- Handkerchiefs

6214- Shawls, scarves, mufflers, mantillas, veils, etc.

6301- Blankets, traveling rugs

6302- Bed Linen, table linen, toilet linen, kitchen linen

6303- Curtains, drapes, interior blinds, valences

6304- Bedspreads, furnishings

6305- Sacks and bags for packing

6306- Tarpaulins, awnings, sunblinds, tents, sails, camping goods

6307.10- Dust cloths, mop cloths, polishing cloths, shop towels, bar mops, dishcloths

6307.90- Labels, cords, tassels, corset and footwear lacings, toys for pets, wall banners, surgical towels, tufted towels, pillow shells, quilt and comforter shells, national flags, moving pads

6308- Needlecraft sets

9404.90- Pillows, cushions, quilts, comforters

(B) Special rules govern **knit-to-shape** products.

The country of origin of knit-to-shape products is the country in which **major parts are knitted or crocheted** directly to the shape used in the finished product.

Knit-to-shape means that the panels or parts (not including parts such as collars, cuffs, waistbands, plackets, pockets, linings, pads, trim or similar parts) are knit to the shape used in the final assembly process (rather than knit into a tube or blanket of material that is cut to shape). Minor cutting, trimming or sewing does not affect whether components are knit to shape. Knit-to-shape applies when 50 percent or more of the exterior surface area (not including patch pockets, appliques, etc.) is knitted or crocheted.

For hosiery, the addition of gussets or top elastics or the closing of toes does not affect the status of knit-to-shape.

(3) MULTI-COUNTRY RULE

If the country of origin of a textile or apparel product cannot be determined by one of the above rules and the product is created as a result of processing in two or more countries, the country of origin is:

(A) The country in which the **most important assembly or most important manufacturing process** occurs.

The most important processing operation must be determined on a case-by-case basis through binding rulings and court decisions. The resulting body of rulings and court decisions may serve as guidelines in the future.

(B) If the **most important assembly or manufacturing process cannot be determined**, the country of origin is the **last country in which an important assembly or manufacturing operation** occurred.

For example: if the right half of a coat is assembled in one country and the left half is assembled in another country, and provided the processing steps in each country are equally balanced, then the country of origin is probably the country in which the two halves are sewn together (that is, the last country in which an important processing operation occurred) because each half is equally important.

More realistically, if one yarn of a plied yarn is produced in one country and the other yarn is produced in a second country, and the yarns are twisted to form a cable, then, assuming both yarns are equal in the final product, the country in which the yarns are twisted together is the country of origin because each yarn is equally important and you have to resort to the last country in which an important processing occurred.

The multiple country scenario also applies to the production of tents assembled from a substantial amount of fabrics produced in two or more countries and sewn together in a third country. The third country is probably the country of origin.

Because the most important processing operation can only be determined on a case-by-case basis, binding rulings should be requested from:

U.S. Customs Service
Director, National Commodity Specialists Division
6 World Trade Center
CIE, Room 437, ATTN: Binding Rulings Section
New York, New York 10048

or

Office of Rulings and Regulations
Tariff Classification Appeals Division
U.S. Customs Service
Franklin Court
1301 Constitution Ave., NW
Washington, DC 20229

The requestor should be sure to specify that the ruling is requested pursuant to the textile and apparel rules of origin in § 334. Complete information should be supplied as to manufacturing and processing and a sample (or drawings if a sample is not practical) showing exact subassemblies or processing steps should be submitted with the request for ruling. Rulings requested from New York should be answered within 30 days if information provided by the requestor is complete.

HIERARCHY OF RULES

The above rules are arranged in a hierarchy to be applied in the following sequential order as specified in Customs Regulation § 102.21(c):

1. Textile or apparel products wholly produced in one country.
2. Each foreign material undergoes requisite tariff shift (as provided in Customs Regulation 102.21),

EXPLANATION:

All textile and apparel products are listed by 4-digit to 10-digit HTS classifications or groups of classifications in the tariff shift rules. The tariff shift rules simply explain the requirements to change the country of origin of textile and apparel products (as shown in the preceding section) by using tariff classifications rather than textile or apparel product descriptions. A tariff shift states that, for any given classification, to change the country of origin of a textile or apparel product there must be a shift from one Harmonized Tariff System (HTS) classification to another as listed in the tariff shift rules and/or the processing which occurs must meet any other requirement that is specified in the tariff shift rules in Customs Regulation 102.21.

EXAMPLE:

One group of classifications in the tariff shift rules is 5208 through 5212, which contain the classifications for cotton woven fabrics. The tariff shift rule for classifications 5208-5212 states that:

- (a) There must be a change to 5208-5212 (cotton woven fabrics) from any classification outside that group of classifications, and
- (b) The change to classifications 5208-5212 must result from a fabric forming process.

To confer country of origin to a cotton fabric, the creation of the fabric must be from some product other than another cotton woven fabric; for example, the fabric could be formed from cotton yarns, or from polyester and cotton yarns, from fibers or any other product except cotton woven fabric (e.g., joining two narrow fabrics). The second requirement of creating a fabric from a fabric forming process must also be met. This tariff shift rule merely restates the fabric rule (in the section above) using tariff classification terms or definitions.

The result is that the determination of the country of origin is defined in **objective tariff classification shifts** rather than **subjective terms** such as "substantial assembly" or "new commercial product." By using HTS classifications, there is no doubt when a change in the country of origin occurs. If a shipper knows the classification of a textile product he is exporting, he merely has to locate the classification in the tariff shift rules to see if the required change of classifications occurred when the product was produced or manufactured. If the tariff shift has occurred and any other listed requirement is met, then the country of origin is changed by the processing.

For example, the tariff classification for 5204 through 5207 (cotton yarns) states that the shift must be from any other heading provided that the change or shift results from a spinning process. This defines the country of origin for spun yarns (see above). The tariff shift for 5208 through 5212 requires a shift from classifications for yarns, fibers or filaments that results from a fabric making process. Similarly, shifts for 6302 require that the country of origin of bed sheets and pillow cases must be from the fabric forming process, i.e., the country in which the fabric was woven and not the country in which the fabric for the sheets and pillow cases was cut and sewn, as defined in one of the listed exceptions above.

3. Textile or apparel products for which the major parts are **knit-to-shape**.
4. Textile or apparel products **wholly assembled** in one country **except** for the 16 specified exceptions.

When the product is manufactured in **two or more countries** and the country of origin **cannot** be determined by the four rules above, the country of origin is:

5. The country in which the **most important assembly or manufacturing process** occurs, and, if that cannot be determined,
6. The last country in which an **important assembly or manufacturing process** occurs.

REMEMBER: Cutting will almost never confer country of origin. For garments, the above rules are based on assembly operations, not on cutting.

SPECIAL EXCEPTIONS & CONSIDERATIONS

Israel Free Trade Agreement

Israel is an **exception** to the country of origin rules. The country of origin for textile and apparel products from Israel will continue to be determined by the current rules in § 12.130, CR (19 CFR § 12.130), e.g., the country in which the components are cut, except for, in general, tailored or complex garments. In T.D. 96-58, published in the *Federal Register* on July 31, 1996, Customs explained how to determine the origin of textile and apparel products that are processed in Israel and another country. If Israel is not the origin under § 12.130, CR (19 CFR § 12.130), Israel cannot be found to be the origin under § 102.21, CR; the processing in Israel will be disregarded when applying the steps in § 102.21.

Insular Possessions

The country of origin rules apply to the insular possessions of the United States. The rules will be used to determine whether the goods qualify as a product of the insular possession under General Note 3(a)(iv) of the Harmonized Tariff Schedules of the United States.

However, Customs will continue to follow past rulings to determine whether foreign fabric has been subjected to a "double substantial transformation" for purposes of the 50 percent foreign material content restriction under General Note 3(a)(iv). **Cutting will continue to be used to maintain current status in achieving a double substantial transformation.** The first portion of the substantial transformation test may occur when fabric is cut into components, while the second may occur when the components are assembled into wearing apparel. In determining whether the apparel meets the 50 percent foreign value limitation, **components which undergo a double substantial transformation are (and will continue to be) treated as materials produced in the insular possession rather than as foreign materials.**

Customs believes the above treatment effectuates the intention of Congress to continue the present duty-free treatment of textile and apparel products cut and sewn in an insular possession of the United States.

Components Cut in the U. S. from Foreign Fabric and Assembled Abroad

The value of components cut to shape (but not to length, width or both) in the U.S. from foreign fabric and exported for assembly abroad into an article that is then returned is **not** included in the dutiable value of the finished article imported into the U.S. (See § 10.25, CR).

- a. For textile and apparel products that do not have category numbers (e.g. umbrellas, parachutes), as well as all footwear

and parts of footwear, assembled in a Caribbean Basin Initiative (CBI) country from components that were **cut to shape** (but not including pieces merely cut to length and/or width) **in the U.S. from foreign fabric**, the assembled textile articles are not subject to duty.

This provision is necessary in the statute because under the country of origin rules cutting does not confer country of origin, and therefore components cut in the U.S. of foreign fabric are not considered to be U.S. products. The definition of textile and apparel products includes articles that were not considered as textile articles by the United States prior to implementation of the new World Trade Organization definitions. This provision continues the current duty free treatment under U.S. Note 2(b), Subchapter II, Chapter 98 of the Harmonized Tariff Schedule of the United States.

- b. The **value of the components** cut in the U.S. from foreign fabric, **up to the 15 percent cap for U.S. origin materials**, may be applied toward determining the minimum 35 percent requirement to qualify for the benefits of CBI.

NAFTA Override

Any **NAFTA override rules** currently in existence will **continue to be applied** if a NAFTA preference is claimed.

FOR EXAMPLE: China is the country of origin of *comforter shells* and also the country of origin of down used to fill the shells. Both of these components are sent to Canada where the down is inserted into the shells. The country of origin of the finished comforter **under the § 334 rules of origin** is China. However, NAFTA provides for an override rule that applies *if a claim is made*. Because the processing in Canada (a)(1)(A) list NAFTA country) satisfies the NAFTA duty preference rule, *if a claim is made for duty preference at the time of entry (or within one year)*, the country of origin is Canada. The NAFTA preference rule continues to override the § 334 country of origin rules in determining the country of origin for NAFTA products.

U.S. Goods Sent Abroad For Processing

For a U.S. produced textile good sent abroad for processing which results in an advancement in value or improvement in condition:

- a. Note 2(a) to Chapter 98, Subchapter 2 will continue to apply for duty assessment;
- b. Customs Regulation §12.130(c) will continue to apply for quota purposes; and
- c. Customs has a project to modify T.D. 90-17. Until T.D. 90-17 is modified, the new section 102.21 will not apply for marking purposes. Therefore, the country of processing (advancement in value, or improvement in condition) must be marked. However, waivers from this requirement may be requested.

Sets

If one or more components in a set are textile articles and there is no single country of origin for these components, the country of

origin for each textile component of the set is determined separately. A **composite good** will continue to be considered as one combined good.

SUMMARY OF RULES

1. **Cutting does not determine the country of origin** (previously cutting determined country of origin for 90 percent of wearing apparel imports). The § 334 rules are based on processing or assembly operations.
2. Customs previous interpretation of **substantial transformation** has been replaced with statutory rules based on processing.
3. A subjective determination under the provisions of § 12.130 CR is largely replaced by **objective processing** operations expressed in terms of tariff shifts.
4. Country of origin for textile and apparel products processed, assembled or manufactured in two or more countries is determined by where the most important processing occurs, and, if that cannot be ascertained, the last country in which an important assembly or manufacturing process occurs.

TEXTILE DECLARATION AND QUOTA CHARGE STATEMENT

The single or multiple country of origin declaration as shown in § 12.130(f), CR will continue to be required after implementation of the § 334 rules of origin.

The quota charge statement continues to be required after implementation of the § 334 rules of origin.

FAILURE TO FOLLOW THE ORIGIN RULES

Because the § 334 rules govern the origin of goods for purposes of quantitative restrictions (quota), goods subject to quota which arrive without correct visas are inadmissible and may be detained (until correct visas are obtained), denied entry, or in certain cases seized. Material false statements or omissions regarding origin may also lead to civil penalties or criminal prosecution. Failure to have the goods properly marked with the correct country of origin may also lead to the assessment of marking duties, or in certain cases, penalties, or in cases of repeated or intentional violations, seizure and forfeiture. In addition, goods which were released may be subject to orders to redeliver the goods to Customs. Failure to comply with such orders may lead to the assessment of liquidated damages.

SUMMARY OF ISSUED RULINGS

The Customs Service has issued approximately 200 rulings involving the rules of origin for textile and apparel products. The Appendix contains charts which list those rulings by category. Copies of the actual rulings may be obtained from the Customs Electronic Bulletin Board or viewed on the Customs Internet world wide web site, both of which are described below.

ADDITIONAL INFORMATION

Customs Electronic Bulletin Board

The Customs Electronic Bulletin Board (CEBB) is an automated system which provides the entire trade community with current, relevant information regarding Customs operations and items of special interest. It was established as another effort to promote the Customs Service as "trade friendly" within the importing and exporting community. The CEBB posts timely information including proposed regulations, news releases, Customs publications and notices, etc. which may be "downloaded" to your own PC. The Customs Service does not charge the public to use the CEBB. You only pay telephone charges. To use the CEBB, you must have a personal computer with a modem. The CEBB supports modem speeds from 2400 to 28,800 baud. Set up your terminal as ANSI, set databits to 8, set parity to N and stopbits to 1. Dial (703) 440-6155 and log on with your name and choose a password. After a few questions, you are set to get up-to-date information from Customs. If you have any questions about the CEBB, call (703) 440-6236.

The Internet

The Customs home page on the Internet's World Wide Web—which began public operation on August 1, 1996—will also provide the entire trade community with current, relevant information regarding Customs operations and items of special interest. It was established as another effort to promote the Customs Service as "trade friendly" within the importing and exporting community. The home page will post timely information including proposed regulations, news releases, Customs publications and notices, etc. which may be printed or "downloaded" to your own PC. Not all features may be available in the beginning. The Customs Service does not charge the public for this service, although you will need Internet access to use it. The Internet address for Customs home page is currently <http://www.customs.ustreas.gov>, although it will be changed in the near future to <http://www.customs.treas.gov>.

Customs Regulations

The current edition of *Customs Regulations of the United States*, in loose-leaf format, is available by subscription from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. The bound 1996 Edition of Title 19, *Code of Federal Regulations*, which incorporates all changes to the *Customs Regulations* from April, 1995 through March, 1996 is also available for sale from the same address. All proposed and final regulations are published in the *Federal Register* which is published daily by the Office of the Federal Register, National Archives and Records Administration, and distributed by the Superintendent of Documents. Information on on-line access to the *Federal Register* may be obtained by calling (202) 512-1530 between 7 a.m. and 5 p.m. Eastern time. These notices are also published in the weekly CUSTOMS BULLETIN described below.

Customs Bulletin

The *Customs Bulletin and Decisions* ("Customs Bulletin") is a weekly publication which contains decisions, rulings, regulatory proposals, notices and other information of interest to the trade community. It also contains decisions issued by the U.S. Court of International Trade and Customs related decisions of the U. S Court of Appeals for the Federal Circuit. Bound Volumes are issued annually. The CUSTOMS BULLETIN is available for sale from the Superintendent of Documents

Video Tapes

The U. S. Customs Service has prepared a two hour video tape in VHS format to assist Customs officers and members of the public in understanding the *Rules of Origin for Textiles and Apparel Products* which became effective on July 1, 1996. Copies of this tape are available from many trade organizations, customs brokers, consultants and law firms. The tape may also be purchased for \$20.00 (U.S. funds) directly from the Customs Service. If you require further information, or would like to purchase one or more tapes, please forward your written request to: U.S. Customs Service, Office of Regulations and Rulings, 1301 Constitution Avenue, NW, Franklin Court, Washington, DC 20229, Attn: Operational Oversight Division. Orders must be accompanied by a check or money order drawn on a U.S. financial institution and made payable to U.S. Customs Service.

Informed Compliance Publications

The U.S. Customs Service has also prepared other Informed Compliance publications in the *What Every Member of the Trade Community Should Know About*: series which are available from the Customs Electronic Bulletin Board (see above). As of the date of this publication, the following booklets were available: **NAFTA: for Textiles and Textile Articles** (May, 1996), **Raw Cotton: Tariff Classification and Import Quotas** (May, 1996), **Fibers & Yarns—Construction and Classification under the Harmonized System** (September, 1996), **Customs Value** (May, 1996), **Buying & Selling Commissions** (June, 1996). Check the Customs Electronic Bulletin Board for more recent publications.

Other Publications

Customs Valuation Under the Trade Agreements Act of 1979 is a 96-page book containing a detailed narrative description of the customs valuation system, the customs valuation title of the Trade Agreements Act (§ 402 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (19 U.S.C. § 1401a)), the Statement of Administrative Action which was sent to the U.S. Congress in conjunction with the TAA, regulations (19 CFR §§ 152.100–152.108) implementing the valuation system (a few sections of the regulations have been amended subsequent to the publication of the book) and questions and answers concerning the valuation system. A copy may be obtained from the U.S. Customs Service, Office of Regulations and Rulings, Value Branch,

1301 Constitution Avenue, N.W., Franklin Court Building, Washington, D.C. 20229.

Customs Valuation Encyclopedia (with updates) is comprised of relevant statutory provisions, Customs Regulations implementing the statute, portions of the Customs Valuation Code, judicial precedent, and administrative rulings involving application of valuation law. A copy may be purchased for a nominal charge from the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7054.

Additional information may be obtained from Customs ports of entry. Please consult your telephone directory for a Customs office near you. The listing will be found under U.S. Government, Treasury Department.

The information provided in this publication is for general information purposes only. Recognizing that many complicated factors may be involved in customs classification and origin issues, an importer may wish to obtain a ruling under Customs Regulations, 19 C.F.R. Part 177, or obtain advice from an expert (such as a licensed Customs Broker, attorney or consultant) who specializes in such Customs issues. Reliance solely on the general information in this pamphlet may not be considered reasonable care.

APPENDIX

NOTE: The attached tables are an ADVANCE DRAFT and subject to revision before final issuance. They reflect rulings issued through July 10, 1996 but are being updated. This ADVANCE DRAFT is being released for informational purposes. It consists of summary compilations. The text of the actual ruling should be consulted for details and analysis.

Index of Rulings	Appendix 99
Summary of U.S. Customs Binding Rulings	Appendix 103
Woven Tops	Appendix 103
Knit Tops	Appendix 109
Sweaters	Appendix 115
Coats & Jackets	Appendix 115
Skirts	Appendix 116
Underwear	Appendix 117
Shorts & Trousers	Appendix 117
Accessories	Appendix 128
Bags & Luggage	Appendix 132
Home Furnishings	Appendix 138
Tents	Appendix 139

INDEX of RULINGS
U.S. Customs Binding Rulings on Country of Origin
July 10, 1996

Classification	Item	Date of Ruling	Customs Ruling No.
Woven Tops	Women's Blouse	Feb. 22, 1996	HQ958851
	Men's Woven Rayon Button-Front Shirt	Mar. 18, 1996	HQ958792
	Oxford Shirt	Apr. 4, 1996	HQ958923
	Men's Woven Dress Shirt	May 28, 1996	HQ958680
Knit Tops	Turtleneck	May 24, 1996	HQ958655
	T-Shirt	May 24, 1996	HQ958655
	Girl's Knit Polo-Style Shirt	May 28, 1996	HQ958930
	Sweatshirt	May 28, 1996	HQ958656
	Sweatshirt Cardigan	May 31, 1996	HQ958656
	"Joint" Sweatshirt (Horizontal Front Panels)	May 31, 1996	HQ958656
Sweaters	Women's Knit Garment	Apr. 9, 1996	HQ958848
	Girl's Knit Sweater Vest	May 28, 1996	HQ959168
Coats & Jackets	Women's Wool Jacket	Apr. 10, 1996	HQ958964
	Women's Jacket	May 17, 1996	HQ959047
	Women's Coat	May 17, 1996	HQ959047
Skirts	Skirts	Apr. 25, 1996	HQ958970
Underwear	Men's Woven Boxer Shorts	June 6, 1996	HQ959245

INDEX of RULINGS U.S. Customs Binding Rulings on Country of Origin July 10, 1996			
Classification	Item	Date of Ruling	Customs Ruling No.
Shorts & Trousers	Woven Casual Trousers	Feb. 28, 1996	HQ958659
	Twill Shorts & Madras Shorts	Apr. 4, 1996	HQ958923
	Women's Woven Wool Pants & Shorts	Apr. 10, 1996	HQ958964
	Men's Woven Trousers	May 3, 1996	HQ958926
	Men's Woven Trousers	May 15, 1996	HQ958668
	Men's Woven Trousers	May 15, 1996	HQ958797
	Men's Jogging Pants	May 21, 1996	HQ958669
	Men's Knit Pants	May 21, 1996	HQ958669
	Men's Cotton Woven Trousers w/ Lining	May 21, 1996	HQ959045
	Men's Cotton Woven Jumpsuit	May 21, 1996	HQ959045
	Women's Cotton Woven Jumpsuit w/ Lining	May 21, 1996	HQ959045
	Men's or Boys' Overalls	May 31, 1996	HQ958667
	Textile Belt	Apr. 5, 1996	HQ959027
Accessories	Baseball Cap	Apr. 5, 1996	HQ959035
	Hat & Scarf Set	Apr. 12, 1996	HQ959018
	Woven Fabric Logo Labels	Apr. 26, 1996	HQ959014
	Knit Hat	May 3, 1996	HQ958968

INDEX of RULINGS
U.S. Customs Binding Rulings on Country of Origin
July 10, 1996

Classification	Item	Date of Ruling	Customs Ruling No.
Accessories (continued)	Knit Gloves/Mittens	May 3, 1996	HQ958968
	Woven Scarf	June 6, 1996	HQ959201
	Acrylic Scarf	June 6, 1996	HQ959244
	Baseball Cap	June 7, 1996	HQ959203
Bags & Luggage	PVC Lined Tote Bag	May 2, 1996	HQ958626
	PVC Lined Insulated Cosmetic Carry-All	May 2, 1996	HQ958626
	PVC Lined Dome-Shaped Pouch	May 2, 1996	HQ958626
	PVC Lined Duffel-Shaped Pouch	May 2, 1996	HQ958626
	PVC Lined Flat Cosmetic Bag	May 2, 1996	HQ958626
	Cassette Tape & CD Cases	May 13, 1996	HQ959126
Home Furnishings	Backpack	May 24, 1996	HQ958786
	Down Comforter	Mar. 18, 1996	HQ958651
	Dust Ruffle	Apr. 9, 1996	HQ959039
	Quilt	Apr. 29, 1996	HQ958798
	Tents	Apr. 9, 1996	HQ958972
Tents	Cabin Tent	May 9, 1996	HQ959179
	Dome Tent	May 9, 1996	HQ959179

INDEX of RULINGS
U.S. Customs Binding Rulings on Country of Origin
July 10, 1996

Classification	Item	Date of Ruling	Customs Ruling No.
Tents (continued)	Backpacking Dome Tent	May 9, 1996	HQ958802
	Cabin Tent	May 9, 1996	HQ958802
	Family Size Dome Tent	May 9, 1996	HQ958802
	Tents	June 6, 1996	HQ959261

Summary of U.S. Customs Binding Rulings on Country of Origin				
Item	Date	Ruling No.	Production Details	Country of Origin
WOVEN TOPS				
Women's Blouse	Feb. 22, 1996	HQ958851	<p><i>Country A:</i> Components cut to shape Pockets hemmed and sewn to front panel Collar components attached Cuff components attached Yoke attached to back panel Plackets and buttonholes sewn</p> <p><i>Country B:</i> Front and back panels joined at shoulder Sleeves set Side seams closed Collars and cuffs attached</p> <p><i>Country A:</i> Inspection, washing, buttoning, trimming, ironing, and packing</p>	Country B
Men's Woven Rayon Button-Front Shirt	Mar. 18, 1996	HQ958792	<p><i>Hong Kong:</i> Piece goods cut to shape</p> <p><i>China:</i> Collar, collar band, cuffs are formed Pockets set Sleeves formed Front placket sewn to front panel Buttons attached</p>	Hong Kong

Summary of U.S. Customs Binding Rulings
on Country of Origin

Item	Date	Ruling No.	Production Details	Country of Origin
Men's Woven Rayon Button-Front Shirt (continued)	Mar. 18, 1996	HQ958851	<i>Hong Kong:</i> Cuffs attached to sleeves Sleeves attached to body Yoke, front and back panels assembled Side seams sewn Bottom hemmed <i>China:</i> Ironing and packing	Hong Kong
Oxford Shirt	Apr. 4, 1996	HQ958923	Fabric cut in the Maldives Components assembled in the Maldives Washing, ironing, packing in Sri Lanka	The Maldives
Men's Woven Dress Shirt	May 28, 1996	HQ958680	<i>Country A</i> Fabric cut Collar subassembled Patch pocket hemmed, ironed and sewn to left shirt front Front plackets subassembled, attached, buttons/button holes sewn Sleeve plackets subassembled, attached, buttons/button holes sewn Label sewn to yoke, yoke attached to back panel Cuffs subassembled, buttons attached, button holes sewn Yoke joined to left and right front panels	Country A

Summary of U.S. Customs Binding Rulings
on Country of Origin

Item	Date	Ruling No.	Production Details	Country of Origin
Men's Woven Dress Shirt (continued)	May 28, 1996	HQ958680	<i>Country B</i> Sleeves attached Side seams sewn Cuffs attached Collar attached, buttons and button holes sewn Inspection, ironing and packing	Country A
			<i>Country A</i> Fabric cut Collar subassembled Patch pocket hemmed, ironed and sewn to left shirt front Front plackets subassembled, attached, buttons/button holes sewn Sleeve plackets subassembled, attached, buttons/button holes sewn Label sewn to yoke, yoke attached to back panel Cuffs subassembled, buttons attached, button holes sewn Yoke joined to left and right front panels Sleeves attached <i>Country B</i> Side seams sewn Cuffs attached Collar attached, button and button holes sewn Inspection, ironing and packing	Country A

Summary of U.S. Customs Binding Rulings on Country of Origin				
Item	Date	Ruling No.	Production Details	Country of Origin
Men's Woven Dress Shirt (continued)	May 28, 1996	HQ958680	<i>Country A</i> Fabric cut Collar subassembled Patch pocket hemmed, ironed and attached to left shirt front Front plackets subassembled, attached, buttons/but- ton holes sewn Sleeve plackets subassembled, attached, buttons/but- ton holes sewn Label sewn to yoke, yoke attached to back panel Cuffs subassembled, buttons attached, and button holes sewn <i>Country B</i> Yoke joined to left and right front panels Sleeves attached Side seams sewn Cuffs attached Collar attached and buttons/button holes sewn <i>Country A</i> Inspection, ironing and packing	Country B
			<i>Country A</i> Fabric cut Collar subassembled Patch pocket hemmed, Ironed and attached to left shirt front	

Summary of U.S. Customs Binding Rulings on Country of Origin				
Item	Date	Ruling No.	Production Details	Country of Origin
Men's Woven Dress Shirt (continued)	May 28, 1996	HQ958680	Front plackets subassembled, attached, buttons/button holes sewn Sleeve plackets subassembled, attached, buttons/button holes sewn Label sewn to yoke, yoke attached to back panel Cuffs subassembled	Country B
			<i>Country B</i> Yoke joined to left and right front panels Sleeves attached Side seams sewn Cuffs attached Collar attached and buttons/button holes sewn	Country B
			<i>Country A</i> Washing, inspection, ironing and packing	Country A
			<i>Country A</i> Fabric cut Collar subassembled Patch pocket hemmed, ironed and attached to left shirt front Front plackets subassembled, attached, buttons/button holes sewn Sleeve plackets subassembled, attached, buttons/button holes sewn Label sewn to yoke, yoke attached to back panel Cuffs subassembled, buttons attached, button holes sewn Yoke joined to left and right panels	

Summary of U.S. Customs Binding Rulings on Country of Origin				
Item	Date	Ruling No.	Production Details	Country of Origin
Men's Woven Dress Shirt (continued)	May 28, 1996	HQ958680	<i>Country B</i> Sleeves attached Side seams sewn Cuffs attached Collar attached, buttons/button holes sewn	Country A
			<i>Country A</i> Washing, inspection, ironing and packing	
			<i>Country A</i> Fabric cut Collar subassembly Patch pocket hemmed, ironed and attached to left shirt front Front plackets subassembled, attached, buttons/button ton holes sewn Sleeve plackets subassembled, attached, buttons/button ton holes sewn Label sewn to yoke, yoke attached to back panel Cuffs subassembled, buttons attached, button holes sewn Yoke joined to left and right front panels Sleeves attached	Country A
			<i>Country B</i> Side seams sewn Cuffs attached Collar attached, buttons/button holes sewn	
			<i>Country A</i> Washing, inspection, ironing and packing	

**Summary of U.S. Customs Bindings Rulings
on Country of Origin**

Item	Date	Ruling No.	Production Details	Country of Origin
KNIT TOPS				
Turtleneck	May 24, 1996	HQ958655	<i>Country B</i> Pattern design Fabric marked according to pattern	Country B
			<i>Country A</i> Fabric cut Shoulder seam sewn Collar attached	
			<i>Country B</i> Sleeves attached Side seams closed Ribbed band cuffs attached to sleeves and hemmed Ironing and packing	
			<i>Country B</i> Pattern design Fabric marked according to pattern	
			<i>Country A</i> Fabric cut Shoulder seam sewn Collar attached Sleeves attached	Country A
			<i>Country B</i> Side seams closed Ribbed band cuffs attached to sleeves and hemmed Ironing and packing	

Summary of U.S. Customs Binding Rulings on Country of Origin				
Item	Date	Ruling No.	Production Details	Country of Origin
T-Shirt	May 24, 1996	HQ958655	<i>Country B</i> Pattern design Fabric marked according to pattern <i>Country A</i> Fabric cut Shoulder seam sewn Neck band sewn and attached <i>Country B</i> Side seams closed Sleeves attached Shirt bottom and sleeves hemmed Ironing and packing	Country B
			<i>Country B</i> Pattern design Fabric marked according to pattern <i>Country A</i> Fabric cut Shoulder seam sewn Sleeves attached Neck band sewn and attached <i>Country B</i> Side seams closed Shirt bottom and sleeves hemmed Ironing and packing	Country A

Summary of U.S. Customs Binding Rulings
on Country of Origin

Item	Date	Ruling No.	Production Details	Country of Origin
Girls' Knit Polo-Style Shirt	May 28, 1996	HQ958930	<i>Country A</i> Fabric formed Fabric cut Front panel embroidered with design on left side of the chest Shoulder seams sewn with reinforcing shoulder tape Facing inserted in front placket and placket attached to front Buttons and button holes sewn Rib cuffs attached to sleeves Label sewn to back panel <i>Country B</i> Sleeves attached Side seams sewn Collar attached Hemming, inspection, trimming and packing	Country B
			<i>Country A</i> Fabric formed Fabric cut Front panel embroidered with design on left side of the chest Shoulder seams sewn with reinforcing shoulder tape Facing inserted in front placket and placket attached to front Buttons and button holes sewn Rib cuffs attached to sleeves Label sewn to back panel Collar attached	Country A

Summary of U.S. Customs Binding Rulings on Country of Origin				
Item	Date	Ruling No.	Production Details	Country of Origin
Girls' Knit Polo-Style Shirt (continued)	May 28, 1996	HQ958930	<i>Country B</i> Sleeves attached Side seams sewn Hemming, inspection, trimming and packing	Country A
Sweatshirt	May 31, 1996	HQ958656	<i>Country B</i> Pattern design Fabric marked according to pattern <i>Country A</i> Fabric cut Waistband pieces attached to front and back panels Shoulder seam sewn Collar/neckband sewn and attached <i>Country B</i> Sleeves attached Side seams sewn Ribbed band cuffs attached to sleeves and hemmed Waistband hemmed and finished Ironing and packing	Country B
			<i>Country B</i> Pattern design Fabric marked according to pattern <i>Country A</i> Fabric cut Waistband pieces attached to front and back panels	Country A

Summary of U.S. Customs Binding Rulings
on Country of Origin

Item	Date	Ruling No.	Production Details	Country of Origin
Sweatshirt (continued)	May 31, 1996	HQ958656	Shoulder seam sewn Collar/neckband sewn and attached Sleeves attached <i>Country B</i> Side seams sewn Ribbed band cuffs attached to sleeves and hemmed Waistband hemmed and finished Ironing and packing	Country A
Sweatshirt Cardigan	May 31, 1996	HQ958656	<i>Country B</i> Pattern design Fabric marked according to pattern <i>Country A</i> Fabric cut Pockets attached to each front panel Shoulder seams joined Placket sewn <i>Country B</i> Side seams sewn Sleeves attached to front and back panels Cuffs and bottom hem band attached and finished Button holes and button sewn Ironing and packing	Country B
			<i>Country B</i> Pattern design Fabric marked according to pattern	Country A

Summary of U.S. Customs Binding Rulings
on Country of Origin

Item	Date	Ruling No.	Production Details	Country of Origin
Sweatshirt Cardigan (continued)	May 31, 1996	HQ958656	<p><i>Country A</i> Fabric cut Pockets attached to each front panel Shoulder seams joined Placket sewn Sleeves attached to front and back panels</p> <p><i>Country B</i> Side seams sewn Cuffs and bottom hem band attached and finished Button holes and buttons sewn Ironing and packing</p>	Country A
"Joint" Sweatshirt (Horizontal Front Panels)	May 31, 1996	HQ958656	<p><i>Country B</i> Fabric marked according to pattern</p> <p><i>Country A</i> Fabric cut Three front panels sewn together Shoulder seam joined Collar/neckband attached to front and back panels</p> <p><i>Country B</i> Sleeves attached Side seams joined Cuffs and waistband attached and hemmed Ironing and packing</p>	Country A

Summary of U.S. Customs Binding Rulings on Country of Origin				
Item	Date	Ruling No.	Production Details	Country of Origin
SWEATERS				
Women's Knit Garment	Apr. 9, 1996	HQ958848	Panels and sleeves are knit in China Linking, looping, and shipping are done in Hong Kong	China
Girls Knit Sweater Vest	May 28, 1996	HQ959168	Panels are knit in China Linking, finishing and packing in Hong Kong	China
COATS & JACKETS				
Women's Wool Jacket	Apr. 10, 1996	HQ958964	Fabric and trim made in Italy Fabric cut in Italy Assembly in Bulgaria	Bulgaria
Women's Jacket	May 17, 1996	HQ959047	<i>Country B</i> Fabric cut Collar assembled Front panels w/ zipper, lining panel and side pocket sewn Back panel w/ darts and lining panel sewn Sleeves w/ lining panels & sleeve strap sewn (side seam not sewn) Cuffs assembled <i>Country A</i> All components assembled together	Country B
Women's Coat	May 17, 1996	HQ959047	<i>Country B</i> Fabric cut Collar assembled Front panels w/ facing and one pocket sewn on each panel	Country B

Summary of U.S. Customs Binding Rulings on Country of Origin				
Item	Date	Ruling No.	Production Details	Country of Origin
Women's Coat (continued)	May 17, 1996	HQ959047	Back panel formed by two fabrics w/ yoke sewn Bottom vent sewn Complete lining sewn Sleeve panels sewn w/ plackets (side seams not sewn) Cuffs assembled	Country B
			Country A All components assembled together	
			Country B Fabric cut Collar assembled Front panels w/ facing and one pocket each sewn Back panel formed by two fabrics w/ yoke sewn Complete lining sewn Sleeve panels sewn w/ plackets (side seams not sewn) Cuffs assembled	Country B
			Country A Outer shell of the garment assembled	
Skirts	Apr. 25, 1996	HQ958970	Country B Outer shell and lining sewn together	
			SKIRTS	
Skirts	Apr. 25, 1996	HQ958970	Fabric woven in Country A Fabric cut into multiple components and sewn in Country A Fabric for lining woven and cut in Country B Skirt and lining sewn together in Country C	Country A

Summary of U.S. Customs Binding Rulings on Country of Origin				
Item	Date	Ruling No.	Production Details	Country of Origin
Skirts (continued)	Apr. 25, 1996	HQ958970	Fabric woven in Country A Fabric cut into one component, & sewn to form a tube in Country A Fabric for lining woven and cut in Country B Skirt and lining sewn together in Country C	Country C
UNDERWEAR				
Men's Woven Boxer Shorts	June 6, 1996	HQ959245	Fabric cut in Taiwan Assembled in Vietnam	Vietnam
SHORTS & TROUSERS				
Woven Casual Trousers	Feb. 28, 1996	HQ958659	<i>Country A:</i> Components cut to shape Front and back panels are pleated Pockets hemmed and sewn in Zipper sewn in <i>Country B:</i> Front and back panels joined Waistband sewn on <i>Country A:</i> Bar Tacking, buttonholes and buttons	Country B
Twill Shorts & Madras Shorts	Apr. 4, 1996	HQ958923	Fabric cut in the Maldives Components assembled in the Maldives Washing, ironing, packing in Sri Lanka	The Maldives

Summary of U.S. Customs Binding Rulings on Country of Origin				
Item	Date	Ruling No.	Production Details	Country of Origin
Women's Woven Wool Pants & Woven Wool Shorts	Apr. 10, 1996	HQ958964	Fabric and trim ade in Italy Fabric cut in Italy Assembly in Bulgaria	Bulgaria
Men's Woven Trousers	May 3, 1996	HQ958926	<p><i>Country B:</i> Pattern design and grading Fabric marked according to pattern</p> <p><i>Country A:</i> Fabric cut Front and back pockets sewn Front rise joined w/ zipper attached</p> <p><i>Country B:</i> Back rise sewn Leg seams and in-seam assembled Waistband and belt loops attached Legs hemmed Buttons and buttonholes sewn Quality control Washing, pressing, and packing</p> <p><i>Country B:</i> Pattern design and grading Fabric marked according to pattern</p> <p><i>Country A:</i> Fabric cut to pattern Pockets sewn</p>	Country A
				Country B

Summary of U.S. Customs Binding Rulings
on Country of Origin

Item	Date	Ruling No.	Production Details	Country of Origin
Men's Woven Trousers (continued)	May 3, 1996	HQ958926	<i>Country B:</i> Front and back rise joined w/ zipper attached Leg seam and in-seam attached	Country B
			<i>Country A:</i> Waistband and belt loops attached Legs hemmed Buttons and buttonholes sewn Quality control Washing, pressing, and Packing	
			<i>Country B:</i> Pattern design and grading Fabric marked according to pattern	
			<i>Country A:</i> Fabric cut Front and back pockets sewn Front rise joined w/ zipper attached	
			<i>Country B:</i> Back rise sewn Leg seams and in-seam assembled	Country A
			<i>Country A:</i> Waistband and belt loops attached Legs hemmed Buttons and buttonholes sewn Quality control Washing, pressing, and packing	

Summary of U.S. Customs Binding Rulings on Country of Origin				
Item	Date	Ruling No.	Production Details	Country of Origin
Men's Woven Trousers (continued)	May 3, 1996	HQ958926	<i>Country B:</i> Pattern design and grading Fabric marked according to pattern	Country A
			<i>Country A:</i> Fabric cut Front and back pockets sewn Front and back rise joined w/ zipper attached	
			<i>Country B:</i> Leg seams and in-seam assembled	
			<i>Country A:</i> Waistband and belt loops attached Legs hemmed Buttons and buttonholes sewn Quality control Washing, pressing, and packing	
			<i>Country B:</i> Pattern design and grading Fabric marked according to pattern	
Men's Woven Trousers	May 15, 1996	HQ958668	<i>Country A:</i> Fabric cut Front and back pockets sewn Front and back rise joined	Country A
			<i>Country B:</i> All leg seams sewn Waistband attached to front and back panels	

Summary of U.S. Customs Binding Rulings
on Country of Origin

Item	Date	Ruling No.	Production Details	Country of Origin
Men's Woven Trousers (continued)	May 15, 1996	HQ958668	<i>Country A</i> Legs hemmed Belt loops attached Buttons and button holes sewn Quality control Washing, pressing, and packing	Country A
			<i>Country B</i> Pattern design and grading Fabric marked according to pattern	Country A
			<i>Country A</i> Fabric cut Front and back pockets are sewn Front and back rise joined Outside leg seams assembled	
			<i>Country B</i> Waistband attached to front and back panels In-seam assembled Buttons and button holes are sewn Belt loops attached Hems or cuffs sewn Quality control Washing, pressing, and packing	
			<i>Country B</i> Pattern design and grading Fabric marked according to pattern	Country A

Summary of U.S. Customs Binding Rulings on Country of Origin				
Item	Date	Ruling No.	Production Details	Country of Origin
Men's Woven Trousers (con- tinued)	May 15, 1996	HQ958668	<p><i>Country A</i> Fabric cut Front and back pockets are sewn Front and back rise joined</p> <p><i>Country B</i> Waistband attached to front and back panels All leg seams sewn Buttons and button holes sewn Belt loops attached Hems or cuffs sewn Quality control Washing, pressing, and packing</p>	Country A
Men's Woven Trousers	May 15, 1996	HQ958797	<p><i>China</i> Fabric cut Pockets sewn onto front and rear panels</p> <p><i>Hong Kong</i> Two front panels, w/ zipper attached, joined Two back panels joined Front and back panels joined Waistband & belt loops cut to length and assembled Waistband buttons and button holes sewn</p> <p>Rear pocket button hole sewn in either China or Hong Kong</p>	Hong Kong

Summary of U.S. Customs Binding Rulings
on Country of Origin

Item	Date	Ruling No.	Production Details	Country of Origin
Men's Woven Trousers (continued)	May 15, 1996	HQ958797	<p><i>China</i> Fabric cut Two front panels, w/zipper attached, joined Two back panels joined Pockets sewn onto front and back panels</p> <p><i>Hong Kong</i> Front and back panels joined Waistband and belt loops cut to length and assembled Waistband buttons and button holes sewn Rear pocket button hole sewn in either China or Hong Kong</p>	China
Men's Jogging Pants	May 21, 1996	HQ958669	<p><i>Country B</i> Pattern design Fabric marked according to pattern</p> <p><i>Country A</i> Fabric cut Pocket patch sewn to back panel Rise sewn Outside leg seam sewn Side pockets sewn</p> <p><i>Country B</i> In-seam sewn Ribbed cuffs attached to each leg Waistband attached to front and back panels Quality control Pressing and packing</p>	Country A

Summary of U.S. Customs Binding Rulings on Country of Origin				
Item	Date	Ruling No.	Production Details	Country of Origin
Men's Knit Trousers	May 21, 1996	HQ958669	<i>Country B</i> Pattern design Fabric marked according to pattern <i>Country A</i> Fabric cut Patch pocket sewn to a back panel Rise sewn	Country B
			<i>Country B</i> Side seams assembled Side pockets attached In-seam assembled Waistband attached to front and back panels Legs hemmed Quality control Pressing and packing	
			<i>Country B</i> Pattern design Fabric marked according to pattern <i>Country A</i> Fabric cut Rise sewn Side seams Patch pocket and side pocket attached to a back panel	Country A
			<i>Country B</i> In-seam assembled Waistband attached to front and back panels	

Summary of U.S. Customs Binding Rulings
on Country of Origin

Item	Date	Ruling No.	Production Details	Country of Origin
Men's Knit Trousers (continued)	May 21, 1996	HQ958669	Legs hemmed Quality control Pressing and packing	Country A
Men's Cotton Woven Trousers w/ Polyester Lining	May 21, 1996	HQ959045	<p><i>Country B</i> Fabric cut Front leg panels w/darts & one side pocket each sewn Zipper sewn onto the left leg panel Front fly, waistband, and belt loops sewn Back leg panels w/ darts sewn One back pocket sewn onto right leg panel Complete lining sewn (front and back panels joined)</p> <p><i>Country A</i> Outer shell of trousers assembled</p> <p><i>Country B</i> Outer shell of trousers and lining sewn together</p> <p><i>Country B</i> Fabric cut Front leg panels w/ darts, w/ lining, w/ one side pocket each sewn Zipper sewn onto the left leg panel Front fly, waistband, and belt loops sewn Back leg panels w/ darts, w/ lining sewn One back pocket sewn onto right leg panel</p> <p><i>Country A</i> Components assembled</p>	Country A

Summary of U.S. Customs Binding Rulings on Country of Origin				
Item	Date	Ruling No.	Production Details	Country of Origin
Men's Cotton Woven Jumpsuit	May 21, 1996	HQ959045	<p><i>Country B</i> Fabric cut Collar assembled Front top panels, each w/ front yoke and pocket sewn Back top panel w/ back yoke sewn Front leg panels, each w/ side pocket sewn Back leg panels, each w/ one back pocket sewn Sleeve panels w/ plackets sewn (side seams not sewn) Cuffs assembled</p> <p><i>Country A</i> Components assembled</p>	Country A
Women's Cotton Woven Jumpsuit w/ Polyester Lining	May 21, 1996	HQ959045	<p><i>Country B</i> Fabric cut Collar assembled Front top panels, each w/ front yoke and pocket sewn Back top panels w/ back yoke sewn Front leg panels, each w/ one side pocket sewn Back leg panels, each w/ one back pocket sewn Complete lining sewn (ready to attach to garment) Sleeve panels w/ plackets sewn (side seams not sewn) Cuffs assembled</p> <p><i>Country A</i> Outer shell of jumpsuit assembled</p> <p><i>Country B</i> Outer shell and lining sewn together</p>	Country A

Summary of U.S. Customs Binding Rulings
on Country of Origin

Item	Date	Ruling No.	Production Details	Country of Origin
Men's or Boys' Overalls	May 31, 1996	HQ958667	<i>Country B</i> Pattern design and grading Fabric marked according to pattern	Country A
			<i>Country A</i> Fabric cut Front/back bibs each assembled, shoulder straps, pockets attached	
			Front/back bibs attached to pant Front and back rise of the pant assembled Waist attached to front panels of the pant Button holes and buttons sewn	
			<i>Country B</i> In-seam and side seam assembled Belt loops attached Quality control	
			<i>Country A</i> Washing, ironing and packing	
			<i>Country B</i> Pattern design and grading Fabric marked according to pattern	Country A
			<i>Country A</i> Fabric cut Front/back bibs each assembled, shoulder straps, pockets attached Front/back bibs attached to pant	

Summary of U.S. Customs Binding Rulings on Country of Origin				
Item	Date	Ruling No.	Production Details	Country of Origin
Men's or Boys' Overalls	May 31, 1996	HQ958667	Front and back rise of the pant assembled Button holes and buttons sewn	Country A
			<i>Country B</i> In-seam and side seam assembled Waist attached to front panels of the pant Belt loops attached Quality control	
			<i>Country A</i> Washing, ironing, and packing	
ACCESSORIES				
Textile Belt	Apr. 5, 1996	HQ959027	Fabric woven in Country A Fabric cut to form belting strips in Country A Hemming in Country A Holes punched and buckle and hardware attached in Country B	Country B
			Cut in Korea Assembled in Vietnam	Vietnam
Baseball Cap	Apr. 5, 1996	HQ959035	Cut In Korea Major pieces sewn In Vietnam Assembled In Korea	Vietnam

Summary of U.S. Customs Binding Rulings
on Country of Origin

Item	Date	Ruling No.	Production Details	Country of Origin
Hat & Scarf Set	Apr. 12, 1996	HQ959018	<i>Hat:</i> Fabric woven in Country A Components cut to size and sewn in Country B <i>Scarf:</i> Fabric woven in Country A Components cut and hemmed in Country B	Country B Country A
Woven Fabric Logo Labels	Apr. 26, 1996	HQ959014	Fabric woven in Country A Fabric cut in Country B Blanks adorned with logo in Country B	Country A
Knit Hat	May 3, 1996	HQ958968	Fabric woven including label and logo in Country A Labels cut and hemmed in Country B <i>Taiwan</i> Goods knit using jacquard circular machines <i>Vietnam</i> All other processes, including stitching, attachment of pompoms, fit and inspection	Country A Taiwan
Knit Gloves/Mittens	May 3, 1996	HQ958968	<i>Taiwan</i> Goods knit using jacquard circular machines <i>Vietnam</i> All other processes, including stitching, fit and inspection	Taiwan
Woven Scarf	June 6, 1996	HQ959201	Fabric dyed/printed in Korea Fabric cut in China Assembled in China	Korea

Summary of U.S. Customs Binding Rulings on Country of Origin				
Item	Date	Ruling No.	Production Details	Country of Origin
Acrylic Scarf	June 6, 1996	HQ959244	Fabric knit in Taiwan Fabric cut in China Felt backing sourced and sewn in China Assembled in China	China
Baseball Cap	June 7, 1996	HQ959203	<p><i>Korea</i> Fabric laminated and cut</p> <p><i>Vietnam</i> Peak sewn</p> <p><i>Korea</i> Crown sewn Sweatband sewn Peak, crown and sweatband assembled Plastic adjustable back sewn Top button placed, trimming, blocking and packing</p>	Korea
			<p><i>Korea</i> Fabric laminated and cut</p> <p><i>Vietnam</i> Crown sewn</p> <p><i>Korea</i> Peak sewn Sweatband sewn Peak, crown and sweatband assembled Plastic back sewn Top button placed, trimming, blocking and packing</p>	Vietnam

Summary of U.S. Customs Binding Rulings on Country of Origin				
Item	Date	Ruling No.	Production Details	Country of Origin
Baseball Cap (continued)	June 7, 1996	HQ959203	<i>Korea</i> Fabric laminated and cut	<i>Korea</i>
			<i>Vietnam</i> Peak sewn	
			Sweatband sewn	
			<i>Korea</i> Crown sewn	
			Peak, crown and sweatband assembled	
			Plastic back sewn	
			Top button placed, trimming, blocking and packing	
			<i>Korea</i> Fabric laminated and cut	<i>Vietnam</i>
			<i>Vietnam</i> Crown sewn	
			Sweatband sewn	
			<i>Korea</i> Peak sewn	
			Peak, crown and sweatband assembled	
			Plastic back sewn	
			Top button placed, trimming, blocking and packing	

Summary of U.S. Customs Binding Rulings on Country of Origin				
Item	Date	Ruling No.	Production Details	Country of Origin
Baseball Cap (continued)	June 7, 1996	HQ959203	<i>Korea</i> Fabric laminated and cut	<i>Vietnam</i>
			<i>Vietnam</i> Peak sewn	
			Crown sewn	
			<i>Korea</i> Sweatband sewn	
			Peak, crown and sweatband assembled	
			Plastic back sewn	
			Top button placed, trimmings, blocking and packing	
BAGS & LUGGAGE				
PVC Lined Tote Bag	May 2, 1996	HQ958626	<i>Country A</i> Fabric cut	<i>Country B</i>
			Emboss and sew logo	
			Glue cardboard	
			Sew zipper	
			Sew and cut handles	
			Sew handles to zipper panel	
			<i>Country B</i> Sew panels to create body of bag	
			Sew lining panels and Insert into body	
			Attach country of origin labels	
			Cleaning and packing	

Summary of U.S. Customs Binding Rulings on Country of Origin				
Item	Date	Ruling No.	Production Details	Country of Origin
PVC Lined Tote Bag (continued)	May 2, 1996	HQ958626	<i>Country A</i> Fabric cut Emboss and sew logo Sew and cut handles Sew side seams to create body of bag	Country B
			<i>Country B</i> Glue cardboard Sew zipper Sew lining and attach country of origin labels Connect lining and collar to body of bag Cleaning and packing	
PVC Lined Insulated Cosmetic Carry-All	May 2, 1996	HQ958626	<i>Country A</i> Fabric cut Sew flap, foam and piping to create pocket flap Sew velcro, handles and piping	Country B
			<i>Country B</i> Link panels by sewing Sew and connect panels and handle Label, trim and sew binding Cleaning and packing	
			<i>Country B</i> Fabric cut Sew fabric, lining and foam to create main panel Sew handle to main panel	Country A

Summary of U.S. Customs Binding Rulings on Country of Origin				
Item	Date	Ruling No.	Production Details	Country of Origin
PVC Lined Insulated Cosmetic Carry-All (continued)	May 2, 1996	HQ958626	<i>Country A</i> Sew velcro, flaps and panels Sew and connect panels, foam, PVC and velcro Label, trim and sew binding Cleaning and packing	Country A
PVC Lined Dome-Shaped Pouch	May 2, 1996	HQ958626	<i>Country A</i> Fabric cut Sew logo and sew zipper assembly panel Stitch side panels to lining <i>Country B</i> Stitch panels, lining and zipper together Attach label and stitch binding Cleaning and packing	Country B
			<i>Country B</i> Fabric cut Fold logo and sew to body Sew zipper and attach tab creating zipper assembly <i>Country A</i> Stitch panels, lining and zipper together Stitch main body and PVC lining Attach label and stitch binding Cleaning and packing	Country A

Summary of U.S. Customs Binding Rulings on Country of Origin				
Item	Date	Ruling No.	Production Details	Country of Origin
PVC Lined Duffel-Shaped Pouch	May 2, 1996	HQ958626	<i>Country A</i> Fabric cut Sew logo Sew panel lining and zipper together Sew end panels and lining together Sew webbing/piping and stitch to end panels	Country B
			<i>Country B</i> Sew panels and turn bag Sew labels and bind seams Turn bag, finishing and packing	
			<i>Country B</i> Sew logo to body Sew zipper to panel and lining Attache zipper tab	
PVC Lined Flat Cosmetic Bag	May 2, 1996	HQ958626	<i>Country A</i> Sew end panels and lining together Sew webbing and stitch to end panels Sew panels Finishing and packing	Country B
			<i>Country A</i> Fabric cut Fold and sew body to lining and zipper Add zipper tab Turn bag	

Summary of U.S. Customs Binding Rulings on Country of Origin				
Item	Date	Ruling No.	Production Details	Country of Origin
PVC Lined Flat Cosmetic Bag (continued)	May 2, 1996	HQ958626	<i>Country B</i> Sew label and close sides Stitch binding Turn bag, finishing and packing	Country B
			<i>Country B</i> Fabric cut Fold and sew panel, lining and zipper Add zipper tab	Country A
			<i>Country A</i> Turn bag Sew label and close sides Stitch binding Turn bag, finishing and packing	
Backpack	May 24, 1996	HQ958786	Materials sourced in Taiwan (89.5%) Materials sourced in China (10.5%) Materials cut in Taiwan Assembly in China	China
Cassette Tape & CD Cases	May 13, 1996	HQ959126	(CDW Model) <i>Country A</i> Materials sourced <i>Country B</i> Materials marked, cut and dye-punched Zipper tape cut to length, sliders added Foam glued to cardboard	Country B

Summary of U.S. Customs Binding Rulings on Country of Origin				
Item	Date	Ruling No.	Production Details	Country of Origin
Cassette Tape & CD Cases (continued)	May 13, 1996	HQ959126	Panels, foam, cardboard, lining, pockets and PVC spine sewn Zippers tacked to PVC spine <i>Country A</i> Zipper and binding sewn together to outside edges Cleaning, Inspection and pecking Plastic pocket leaves inserted, sales and warranty literature enclosed, final packing done in the U.S.	Country B
			(CL, CD and CP Models) <i>Country A</i> Materials sourced <i>Country B</i> Materials marked, cut and dye-punched Zipper tape cut to length, sliders added Fabric, foam, nylon and zippers flat sewn together Webbing handles and labels added <i>Country A</i> Main panel and side panels sewn together, seam tape added Cleaning, inspection, and pecking Plastic divider trays inserted, sales and warranty literature enclosed, final packing done in the U.S.	

Summary of U.S. Customs Binding Rulings on Country of Origin				
Item	Date	Ruling No.	Production Details	Country of Origin
Cassette Tape & CD Cases (continued)	May 13, 1996	HQ959126	(DM Model) <i>Country A</i> Materials sourced <i>Country B</i> Materials marked, cut and sewn together Zippers sewn into main panel and pocket Webbing and label sewn to fabric <i>Country A</i> Main panels sewn together, seam tape added Cleaning, inspection, packing Sales/warranty literature enclosed, final packing done in the U.S.	Country B
HOME FURNISHINGS				
Down Comforter	Mar 18, 1996	HQ958651	Down from China Fabric cut and sewn in China Assembly in Macau	China
Dust Ruffle	Apr. 9, 1996	HQ959039	Fabric woven in Indonesia Lace made in Singapore Ribbon made in United States Assembly in the Philippines	Indonesia

Summary of U.S. Customs Binding Rulings
on Country of Origin

Item	Date	Ruling No.	Production Details	Country of Origin
Quilt	Apr. 29, 1996	HQ958798	Fabric woven and printed or dyed in Country A Fabric for top of quilt cut into pieces and sewn in Country A Batting manufactured in Country B Assembly in Country B	Country A
TENTS				
Tents	Apr. 9, 1996	HQ958972	Fabric woven in Korea Cut/sewn/finished in Dominican Republic	Korea
			Fabric woven in Sri Lanka Mesh and accessories made in Korea Cut/sewn/finished in either Dominican Republic or Sri Lanka	Sri Lanka
Cabin Tent	May 9, 1996	HQ959179	Fabric for wall and canopy sourced in China Fabric for roof, window, and floor sourced in Korea Assembly in either Dominican Republic or Sri Lanka	Dominican Republic or Sri Lanka
Dome Tent	May 9, 1996	HQ959179	Fabric for wall and fly sourced in China Fabric for wall, fly, window and floor sourced in Korea Assembly in either Dominican Republic or Sri Lanka	Dominican Republic or Sri Lanka
Backpacking Dome Tent Cabin Tent Family Size Dome Tent	May 9, 1996	HQ958802	Fabric for roof and walls sourced in Country A Fabric for roof and walls sourced in Country B Fabric for floor sourced in Country C Cutting, assembly, and packing in Country D	Country D
			Fabric for roof and walls sourced in Country A Fabric for floor sourced in Country C Cutting, assembly and packing in Country D	Country D

Summary of U.S. Customs Binding Rulings on Country of Origin				
Item	Date	Ruling No.	Production Details	Country of Origin
Backpacking Dome Tent Cabin Tent Family Size Dome Tent (continued)	May 9, 1996	HQ958802	Fabric sourced in Country A Cutting, assembly and packing in Country D	Country A
Tents	June 6, 1996	HQ959261	Fabric sourced in Korea Fabric cut in Vietnam Assembly in Vietnam	Korea

What Every Member of the
Trade Community Should Know About:

Fibers & Yarns

Construction and Classification under the Harmonized System



An Advanced Level
Informed Compliance Publication of the
U.S. Customs Service

September, 1996

PREFACE

On December 8, 1993, Title VI of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), which is also known as the Customs Modernization Act or "Mod Act," became effective. These provisions amended many sections of the Tariff Act of 1930 and related laws. Two new concepts which emerge from the Mod Act are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the Mod Act imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act, as amended, (19 U.S.C. § 1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met. The Customs Service is then responsible for fixing the final classification and value of the merchandise. The failure of an importer of record to exercise reasonable care may lead to delay in the release of merchandise or the imposition of penalties.

My office has been given a major role in meeting Customs informed compliance responsibilities. In order to provide information to the public, Customs intends to issue a series of informed compliance publications, and possibly cd-roms and videos, on topics such as value, classification, entry procedures, determination of country of origin, marking requirements, intellectual property rights, record-keeping, drawback, penalties and liquidated damages.

The National Commodities Specialist Division of the Office of Regulations and Rulings has prepared this publication on ***Fibers & Yarns: Construction And Classification Under the Harmonized Tariff System***, as one in a series. It is hoped that this material, together with seminars and increased access to Customs rulings, will help the trade community in improving voluntary compliance with the Customs laws.

The information provided in this publication is for general information purposes only. Recognizing that many complicated factors may be involved in customs valuation issues, an importer may wish to obtain a ruling under Customs Regulations, 19 C.F.R. Part 177, or obtain advice from an expert (such as a licensed Customs Broker, attorney or consultant) who specializes in Customs classification. Reliance solely on the general information in this pamphlet may not be considered reasonable care.

Comments and suggestions are welcomed, and should be addressed to me at the Office of Regulations and Rulings, U.S. Customs Service, 1301 Constitution Avenue, NW (Franklin Ct. Bldg), Washington, DC 20229.

STUART P. SEIDEL,
Assistant Commissioner,
Office of Regulations and Rulings.

**FIBERS & YARNS: CONSTRUCTION
AND CLASSIFICATION
UNDER THE HARMONIZED TARIFF SYSTEM**

TABLE OF CONTENTS

FIBER AND YARN CONSTRUCTION, NOMENCLATURE & TERMINOLOGY	145
BASIC DEFINITIONS	145
YARN CONFIGURATIONS: SINGLE VERSUS PLIED	146
TWIST	146
MEASURING THE "LINEAR DENSITY" OF A YARN	146
COTTON YARN NUMBERS	146
DENIER AND DECITEX	147
TENACITY	147
IDENTIFYING HIGH-TENACITY AND NON-HIGH-TENACITY YARNS	148
SEWING THREAD	149
TABLE 1.1 YARNS PUT UP FOR RETAIL SALE	150
TABLE 1.2 OVERALL GUIDE TO CLASSIFYING TEXTILE YARNS	151
2. SPECIALTY YARNS	151
GIMPED YARN	151
CORE-SPUN YARN	152
BOUCLE YARN	152
CHENILLE YARN	152
LOOP-WALE YARN	152
TEXTURIZED YARN	152
METALIZED YARNS	153
3. CORDAGE, BRAID ETC. OF HEADINGS 5607 AND 5808	154
IDENTIFYING TWINE, CORDAGE, ROPE AND CABLE	154
BRAID: HEADING 5607 VERSUS HEADING 5808	154
"OF WIDE NONFIBRILLATED STRIP"	155
TABLE 3.1 CLASSIFYING TEXTILE YARNS, TWINE, CORDAGE, ROPE AND CABLE	155
4. SILK FILAMENTS, FIBERS & YARNS OF CHAPTER 50	156
5. WOOL & HAIR FIBERS & YARNS OF CHAPTER 51	157
OUTLINE OF THE WOOL PRODUCTION PROCESS	157
OUTLINE OF THE CASHMERE PRODUCTION PROCESS	159
OTHER ANIMAL HAIRS	160
NOTES ON YIELD AND CONDITIONED WEIGHT FOR WOOL	160
TABLE 5.1 GRADES OF WOOL FIBER	161

6. COTTON FIBER & YARNS OF CHAPTER 52	161
COTTON FIBER PRODUCTION	161
A NOTE ON "HARSH OR ROUGH" COTTON	163
WASTE PRODUCTS FROM COTTON FIBER PROCESSING	163
COTTON CLASSIFICATIONS AND QUOTAS: HTS CHAPTERS 52 AND 99	164
COTTON YARNS	166
TABLE 6.1 COTTON YARNS AT A GLANCE: HTS 6-DIGIT SUBHEADINGS	167
7. VEGETABLE FIBERS & YARNS OF CHAPTER 53;	
PAPER YARNS	168
CLASSIFYING VEGETABLE FIBERS	168
CLASSIFYING YARNS, BRAIDS AND FABRICS OF VEGETABLE FIBERS	169
PAPER YARN	170
8. MAN-MADE FILAMENT, STRIP & STAPLE FIBERS, AND YARNS THEREOF	170
MAN-MADE FILAMENTS AND FIBERS	170
MAN-MADE FIBER AND FILAMENT PRODUCTION	171
MAN-MADE STAPLE FIBER PRODUCTION	172
MAN-MADE FIBER YARNS	172
TABLE 8.1 MAN-MADE FILAMENT YARNS AND STRIPS AT A GLANCE	173
TABLE 8.2 MAN-MADE STAPLE FIBER ("SPUN") YARNS AT A GLANCE	174
9. INVOICING REQUIREMENTS	176
YARNS	176
TWINE, CORDAGE, ROPE OR CABLE	177
FIBERS	177
APPENDIX A: USEFUL CONVERSION FACTORS	179
WEIGHT	179
FORCE	179
DISTANCE	179
LINEAR DENSITY	179
TENACITY	179
APPENDIX B: BURN TEST	180
BACKGROUND	180
LIMITATIONS	180
METHOD	180
SAFETY NOTES	181
TABLE B: BURNING CHARACTERISTICS OF TEXTILE FIBERS	181
Additional Information	182

FIBER AND YARN CONSTRUCTION, NOMENCLATURE & TERMINOLOGY

BASIC DEFINITIONS

The HTS provides a wealth of definitions of a wide variety of textile items, but it contains no general definitions of "fiber", or "yarn," or, for that matter, "textiles." The textile trade defines a yarn generally as a strand of textile fibers, filaments or material suitable for knitting, weaving or otherwise forming a textile fabric. However, the HTS contains no such definition and implies in several places that the use of yarn is not necessarily limited to making fabric. This may remain an open question until it is resolved by an administrative or court ruling.

Except in a few cases where the tariff defines the term for a specific limited purpose, there is no general definition for the term textile. Where there is no definition, it would seem reasonable to consider any material that would be classified within Section XI as a "textile."

Yarns are generally made of fibers or filaments, which can come from various sources. The key distinction between filament and staple fiber (commonly known as *spun*) yarns is in the type of material making up the yarn:

Filaments consist of very long, thin cylinders of extruded material, either in single strands ("*monofilament*") or in grouped multiple strands ("*multifilament*"). For purposes of Section XI, a filament is less than 1 millimeter in maximum cross section (i.e., diameter, in most cases). A filament can be compared to a length of wire or fishing line. Multifilament yarns may be, but need not necessarily be, twisted.

Staple fiber yarns generally consist of much shorter lengths of material 25 to 180 mm in length. Generally, to form yarn from such short fibers, the fibers must be first aligned in a parallel fashion (carded, or carded and combed), then wound together ("*spun*") either clockwise or counter-clockwise so that the fibers adhere to each other. A yarn made in this way from staple fibers is also called a *spun* yarn. This type of twisting is to be distinguished from the process of taking two or more yarns and twisting them together to form a plied yarn (see discussion of "Twist" below).

Silk is a naturally-occurring filament; the silkworm produces a single filament of silk that can be thousands of feet in length. Cotton and wool are examples of naturally-occurring staple fibers. The fibers removed from the cotton plant are an inch or two in length, while the fibers cut from a sheep might be several inches in length.

Yarns may also be made of flat strips of materials such as polypropylene that are folded and twisted. If their "apparent width," i.e., their width in the folded or twisted condition, is 5 millimeters or less, they are classified in the appropriate textile provisions, mentioned later in this booklet.

The term "yarn," as it is used in this tariff, includes twine, cordage, rope and cable as well. See later discussion on that subject.

YARN CONFIGURATIONS: SINGLE VERSUS PLIED

Once a group of single filaments or a group of staple fibers is twisted or spun into a yarn, it can be referred to as a single yarn.

Most basic yarns are either single or plied (the HTS calls plied yarns "multiple" or "folded"). A single filament yarn could be a single *multifilament yarn*, which is one collection of parallel filaments grouped together, or twisted together in the same direction, or a single filament (a *monofilament*) intended for use in the production of a fabric. A single staple fiber yarn would be a yarn that has been made by spinning (winding) a collection of staple fibers all in the same direction.

Two or more single yarns can be twisted with each other to form a "plied" or "multiple" or "folded" yarn. Generally, the direction of the twist in such a yarn would be the opposite of the direction of the twist of the single yarns that make up the plied yarn. Two or more plied yarns, when twisted together, in turn become a "cabled" yarn. Item "A" in the figure to the right is an untwisted single yarn, while item "B" is a plied yarn.

TWIST

A yarn can be twisted to form either a *z-twist* (twisted in the counterclockwise direction), or an *s-twist* (twisted in the clockwise direction). To look at it another way, you can untwist a z-twisted yarn by using your hands to untwist it clockwise, and you can untwist an s-twisted yarn by using your hands to untwist it counterclockwise. If you view a yarn under magnification, you could mentally superimpose a "z" over the component yarns in a z-twisted yarn, or an "s" over the component yarns in an s-twisted yarn.

The single yarns that make up a three-ply yarn might, for example, each be twisted in the "z" direction, while the three plies would be twisted in the "s" direction. The direction in which the plies are twisted in order to form the completed plied yarn is called the *final twist*.

Another significant factor for yarn is the amount of twist, usually expressed in either "TPI" (turns per inch) or "TPM" (turns per meter).

MEASURING THE "LINEAR DENSITY" OF A YARN

Yarn Number, Denier, Decitex, Cotton Count and other terms are ways of expressing the *linear density*, or weight per unit length, of a yarn. Industry, in purchasing yarns for any particular use, is concerned with this property, and the HTS also makes certain distinctions that relate to linear density.

For different types of yarn and for different fibers, there are different way of expressing this property. The following discussion is intended to address the most common expressions of linear density as well as number of plies in a yarn.

COTTON YARN NUMBERS

Normally used to describe spun (staple fiber) yarns, the *English yarn number* or *English cotton yarn number* indicates the number of 840-yard lengths in a pound of yarn. The lower the cotton yarn number,

the heavier the yarn. Following is the conversion from English yarn numbers, commonly provided on invoices, to *metric yarn numbers* required by the HTS:

$$\begin{aligned} \text{English yarn no.} \times 1.6933 &= \text{Metric yarn no.} \\ &= \text{Number of 1000 meter} \\ &\quad \text{lengths in a kilogram of} \\ &\quad \text{yarn} \end{aligned}$$

The yarn number is usually shown in conjunction with the number of plies, e.g., 60/1 indicates yarn size 60, one ply (also referred to as "60's"), while 60/2 indicates two size 60 yarns, plied (also referred to as "60's two").

For plied yarns, for purposes of classifying yarns in HTS chapter 52, we take the yarn number of the *individual singles yarns* that make up a plied yarn, & convert it to metric. We do not use the "equivalent" yarn number of the plied yarn. e.g., A 60/2 yarn would be classified under the subheading for plied 60's yarns, not under the subheading for plied 30's yarn.

DENIER AND DECITEX

Normally used to describe filament-type yarns, *denier* indicates the weight in grams of 9,000 meters of yarn. Like the cotton yarn number, it is an expression of *linear density* for a yarn. But unlike the cotton yarn number, the *higher* the denier is, the heavier is the yarn. Following is the conversion from denier, commonly given on invoices, to *decitex*, which is required by the HTS:

$$\begin{aligned} \text{Decitex} &= 1.111 \times \text{Denier} \\ &= \text{weight in grams of 10,000 meters of yarn} \end{aligned}$$

For a plied yarn, denier count may be followed by a specific statement regarding number of plies, e.g., 100D.-3 Ply.

For tariff purposes, however, we are interested in the "singles equivalent," i.e., the denier (or decitex) of the overall plied yarn. In the above example, the singles equivalent denier would be 300 denier (or 333 decitex).

TENACITY

Tenacity is the amount of force (in pounds, grams, centinewtons or other units) needed to break a yarn, divided by the (unstrained) denier, decitex, or some other measure of weight per unit length.

Following are some common conversions related to tenacity:

$$\begin{aligned} \text{Grams/denier} \times 8.827 &= \text{Centinewtons per tex} \\ \text{Millinewtons/decitex} &= \text{Centinewtons per tex} \end{aligned}$$

("Burst strength" or "bursting strength" is a characteristic of fabric that measures how much pressure can be applied to the surface before it bursts. It is often used to assess parachute material. Although you might be given this figure for a fabric, it has no direct relationship to, and cannot be used to calculate, the tenacity of the yarns within the fabric.)

IDENTIFYING HIGH-TENACITY AND NON-HIGH-TENACITY YARNS

The HTS defines *high-tenacity yarn* as yarn having a tenacity, expressed in cN/tex (centinewtons per tex), greater than the following:

for single yarn of nylon or other polyamides, or of polyesters: 60 cN/tex

for multiple (folded) or cabled yarn of nylon or other polyamides, or of polyesters: 53 cN/tex

for single, multiple (folded) or cabled yarn of viscose rayon: 27 cN/tex.

The surest way to distinguish high-tenacity yarns from those that are not high-tenacity is to have them tested in a laboratory. A laboratory will measure linear density (in denier or decitex) and then subject the yarn to controlled tension until the breaking point. The force exerted at the breaking point is then divided by the linear density to calculate the tenacity.

However, this cannot practically be done on every importation of filament yarns. If invoices are in conformity with section 141.89 of the Customs Regulations (quoted later in this booklet), they will indicate whether or not such a yarn is high-tenacity; such invoice statements can be verified by lab testing on a selective basis.

Absent the above information, however, there are several guidelines which *although not conclusive*, may suggest whether a yarn is high-tenacity:

Industrial yarns would seldom be bleached or colored or dyed.

Filament "*textile yarns*" (the term the trade uses for yarns made for apparel and furnishings) generally would not exceed 900 denier (990 decitex), while "*industrial yarns*" (the trade term for yarns for industrial applications such as tires) would generally be 1100 denier (1210 decitex) and higher.

"Textile" yarns would generally be shipped in protective cartons because of their fragility, while tubes of the tougher "industrial" yarns may be stacked directly on skids and shrink-wrapped in plastic.

If a yarn can be easily pulled apart by hand, it is probably not a high-tenacity yarn.

The ultimate consignees or end-users of high-tenacity industrial yarns would normally be tire or rubber product manufacturers or converters. The automotive sector is by far the largest end-use market for these yarns. Another major application is in reinforcing automotive and appliance belts. High-tenacity yarn also has some other minor end uses such as thread for shoes, webbing or strapping, and ballistics fabrics used to make bullet-proof clothing.

The above are merely guidelines to assist you in screening "industrial" yarns from "textile" yarns, the latter being less likely to be high-tenacity. Only lab testing can conclusively distinguish high-tenacity from non-high-tenacity yarns.

SEWING THREAD

"Sewing thread," as used in headings 5204, 5401 and 5508, means multiple (folded) or cabled yarn (a) put up on supports (for example, reels, tubes) of a weight (including support) not exceeding 1,000 g; (b) dressed for use as sewing thread; and (c) with a final Z-twist (Section XI Note 5).

While most elements of this definition are easy to determine, the question of whether a yarn is "*dressed*" is problematic. The Explanatory Notes simply indicate that dressed sewing thread has been "given a finishing treatment," and say nothing about the amount of dressing that should be present.

Industry seems to have no universally accepted standard that dictates the amount of dressing that must be present. The *American Cotton Handbook* says "Each manufacturer develops through research and constant experimentation the processing techniques and formulations which are found to be most suitable for each type of thread and the use the trade makes of it."

The most recent definitive ruling on this issue was HQ 955524 of February 23, 1995. In that ruling, a thread with as little as 1.2% dressing by weight was ruled to be a sewing thread. The ruling stated "the EN's require only the presence of a coating substance. Thus, the yarns in question have been given a finishing treatment and are dressed according to this definition."

TABLE 1.1 YARNS PUT UP FOR RETAIL SALE

This table, for purposes of certain headings of Chapters 50, 51, 52, 54 and 55, summarizes the classification of yarns that are "put up for retail sale." It is adapted from the Explanatory Notes., and is subject to the exceptions listed below.

Way in which put up	Type of yarn (**)	Conditions under which the yarn is to be regarded as put up for retail sale
On cards, reels, tubes or similar supports	(1) Silk, waste silk or man-made filament yarns (2) Wool, fine animal hair, cotton or man-made staple yarns	Weighing 85 g or less (including support) Weighing 125 g or less (including support)
In balls, hanks or skeins	(1) Man-made filament yarn of less than 3,000 decitex, silk or waste silk yarns (2) Other yarns of less than 2,000 decitex (3) Other yarns	Weighing 85 g or less Weighing 125 g or less Weighing 500 g or less
In hanks or skeins comprising several smaller hanks or skeins separated by dividing threads which render them independent one of the other (***)	(1) Silk, waste silk, or man-made filament yarns (2) Wool, fine animal hair, cotton or man-made staple fibre yarns	Each of the smaller skeins to be of a uniform (weight of 85g or less) Each of the smaller skeins to a uniform weight of 125 g or less

Exceptions:

The following yarns are never deemed to be put up for retail sale:

- (a) Single yarn of silk, waste silk, cotton or man-made fibres, however put up.
- (b) Single yarn of wool or of fine animal hair, bleached, dyed or printed, measuring 5,000 decitex or less, however put up.
- (c) Multiple (folded) or cabled yarn of silk or waste silk, unbleached, however put up.
- (d) Multiple (folded) or cabled yarn of cotton or man-made fibres, unbleached, in hanks or skeins.
- (e) Multiple (folded) or cabled yarn of silk or waste silk, bleached, dyed or printed, measuring 133 decitex or less.
- (f) Single, multiple (folded) or cabled yarn of any textile material, in cross-reeled hanks or skeins (Cross-reeling indicates that in building up the hank the thread crosses diagonally as the hank is being wound, preventing the hank from being split. Cross-reeling is the method usually adopted when the hanks are for dyeing.)
- (g) Single, multiple (folded) or cabled yarn of any textile material, put up on supports (e.g., cops, twisting mill tubes, pirns, conical bobbins or spindles) or in some other manner (for example, in the form of cocoons for embroidery looms, cakes made by centrifugal spinning) indicating its use in the textile industry.

Footnotes:

(**) References to the various textile materials apply also to such mixtures as are classified therewith under the provisions of Note 2 to Section XI (see Part (I)(A) of this General Explanatory Note).

(***) The hanks or skeins comprising several smaller hanks or skeins separated by dividing threads are formed of one continuous length of yarn which, on being cut, allows the component hanks or skeins to be readily separated. One or more dividing threads pass between the skeins and keep them separate from each other. These smaller hanks and skeins are often wrapped round with paper bands. Other hanks and skeins of one continuous length, or yarn with dividing threads which do not separate the main hank or skein into smaller hanks or skeins of uniform weight, but are simply intended to prevent tangling during processing (e.g., dyeing), are not regarded as put up for retail sale.

TABLE 1.2 OVERALL GUIDE TO CLASSIFYING TEXTILE YARNS

This is a questionnaire which serves as an overall guide to classifying yarns under the HTS. Answer questions *in sequence*, until you arrive at a 4-digit HTS#.

QUESTIONS	IF YES	IF NO
Rubber core, gimped (wound) with metal?	5605	Go to next question.
Rubber core, not gimped with metal?	5604	Go to next question.
Braided with tight, compact structure?	5607	Go to next question.
Braided, not with tight, compact structure?	5808	Go to next question.
Loop-wale (knitted)?	5606	Go to next question.
Chenille (pile-like)?	5606	Go to next question.
Metal present, for reinforcement?	5607	Go to next question.
Metal present, not for reinforcement?	5605	Go to next question.
Gimped?	5606	Go to next question.
Exceeds decitex requirement of Section XI Note 3?	5607	Go to next question.
Visibly plastic or rubber coated?	5604	Go to next question.
Of silk?	5004-5006	Go to next question.
Of wool or animal hair?	5106-5110	Go to next question.
Of cotton?	5204-5207	Go to next question.
Of vegetable fiber?	5306-5308	Go to next question.
Of paper?	5308.30	Go to next question.
Of man-made filament?	5402-5406	Go to next question.
Of man-made staple fiber?	5508-5511	Not a yarn of Section XI.

2. SPECIALTY YARNS

GIMPED YARN

A *gimped* yarn (heading 5606) consists of a yarn, around which is wrapped another yarn or filament or strip. It is distinguished from a twisted yarn in that the core yarn does not twist with the yarn that is wrapped around it; the surrounding yarn could be unwrapped and the core yarn would remain intact.

CORE-SPUN YARN

Core-spun yarns are often confused with gimped yarns. They differ in that they consist of a core (usually a monofilament or multifilament yarn), around which fibers (not yarns) are wrapped. A common example is a spandex filament core with a wrapping of cotton fibers. Since it is sometimes difficult for the unaided eye to distinguish fibers wrapped around a core from yarn wrapped around a core, it may be necessary to request laboratory analysis to identify such yarns. Core-spun yarns are not classified as gimped yarns but rather as basic yarns in the appropriate provisions in chapters 50-55 (depending on chief weight, generally).

BOUCLE YARN

A *Boucle* yarn might or might not be a gimped yarn, depending on how it is made. The term comes from the French word for "buckled," and refers to a yarn which has a rough appearance with "slubs" at random intervals through the yarn's length. This effect, can be created by using an outer gimping yarn to gather the core yarn unevenly, leaving the core yarn exposed at intervals (known as a "corkscrew" construction). A similar effect can be achieved by varying the tension between two yarns as they are being twisted together. If a boucle yarn is created by gimping, it would most likely be classified under heading 5606. If not it would most likely be classified in the appropriate provision in chapter 50-55.

CHENILLE YARN

A *chenille* yarn (heading 5606) is one that has a pile effect, i.e., it has pile yarns or fibers protruding from the yarn. It can be created by cutting certain woven fabrics lengthwise along a pair of warp yarns, so that the remaining pieces of weft yarn create the pile effect.

LOOP-WALE YARN

Sometimes known as "*chainette*" or "*loop and wale*" yarn, *loop wale yarn* is created by knitting a fabric that is narrow enough to have the appearance of a yarn. It is also covered by heading 5606.

TEXTURIZED YARN

Texturized yarns, also known as *textured* yarns or *bulked* yarns, are normally filament yarns of chapter 54, in which the component filaments have been crimped (i.e., a regular pattern of wrinkles has been imparted to the filaments) to create a softer look and feel. This crimping is achieved by any one of a number of methods, such as knitting a fabric, heat setting it and then "de-knitting" it to yield crimped yarns, or running the yarns through a "stuffer box" which crimps and sets the yarn. They are normally classified in the appropriate subheadings of chapter 54 (see flowchart later in this book).

METALIZED YARNS

Metalized yarns can take many forms. Some examples:

Metal wire combined with textile.

Metalized strip, consisting of a core of metal foil or of plastic (often polyester) film coated with metal dust, sandwiched by means of adhesive between two layers of plastic film (e.g., "Lurex").

Gimped ("supported") yarn, consisting of a man-made fiber yarn around which is wrapped a metalized strip.

Plied yarns, in which one or more of the plies is metalized strip, and others are man-made fiber.

All of these are "metalized yarns" classifiable under HTS 5605.

Often, the actual amount of metal present is quite small in relation to the weight of the textile fibers. However, in general, any of these yarns that have metal present, whatever the proportion of metal present, is classified as a metalized yarn under heading 5605 (reference: Explanatory Notes, page 777).

When classifying a fabric etc. made from such metalized yarn, we count the entire weight of the metalized yarn as "other" textile fibers when making any "chief weight" determination (reference: HQ 084861 and HTS Sect. XI Note 2(B)(a)).

TO SUMMARIZE: for classification purposes, metalized yarns are considered "other" textile fibers, and these yarns are treated that way no matter how little metal is present.

Following are guidelines for classifying decorative metalized yarns and braids, with outer wrap of metalized strip/yarn, and inner core of some other material (of the type normally sold for gift-wrapping or crafts):

Core of rubber thread, outer covering of braided metalized strip/yarn: Heading 5604. The Explanatory Note indicates that 5604 includes rubber thread covered by "plaiting" (braiding). The Explanatory Note for heading 5605 does not mention plaiting or braiding; it appears the intent is for heading 5605 to exclude braid. Heading 5808 ("braid in the piece") also describes this type of item, but heading 5604 ("rubber thread and cord, textile covered") is more specific, per HQ 951886, GRI 3(a). NY 873047.

Core of rubber thread, outer covering of gimped metalized strip/yarn (i.e., metalized strip/yarn is wrapped, not braided, around the rubber core): Heading 5605. Both headings 5604 and 5605 appear to describe the item with equal specificity. In both cases the Explanatory Notes allow a gimped construction. GRI 3(c). NY 871525.

Core of textile yarn, outer covering of braided metalized strip/yarn: Heading 5808. Heading 5605 appears to exclude braided constructions, since they are not mentioned in the Explanatory Note. NY 883073.

Core of textile yarn, outer covering of gimped metalized strip/yarn (i.e., Metalized strip/yarn is wrapped, not braided, around the core): Heading 5605. Explanatory Note specifically describes metalized yarn constructed by gimping. NY 895400.

3. CORDAGE, BRAID ETC. OF HEADINGS 5607 AND 5808 IDENTIFYING TWINE, CORDAGE, ROPE AND CABLE

The classification table found in the General Explanatory Note for Section XI, reproduced below, provides the most useful guide available, on when yarns are classified in heading 5607 versus other places in Section XI. It is notable that:

Gimped, chenille, loop wale, metalized, wool, animal hair and paper yarns that are of twisted construction are *never* classified under heading 5607.

Multifilament yarn without twist or with a twist of less than 5 turns per meter, and monofilament, of Chapter 54, are *never* classified in heading 5607.

Yarns that are of twisted construction and made of silk, flax, true hemp, coir, cotton, other vegetable fibers and man-made fibers are classified in heading 5607 if they meet certain minimum decitex requirements.

Braid is classified in either heading 5607 or in heading 5808, depending on its structure (see further discussion below). If braid is tightly plaited and has a compact structure, it is classified in heading 5607 regardless of its decitex.

In a twisted yarn, the component single plies which make up the final product are simply twisted, either clockwise or counterclockwise, to combine the various plies and to add strength to the yarn. In a braided yarn, the various yarns which make up the final product are interlaced in a diagonal manner. It can sometimes be easily identified by compressing the cord lengthwise (grasping the cord in two places that are close together and pushing those two segments of the cord closer together). This causes the braid structure to loosen and increase in diameter so that the plaited structure is more obviously visible.

BRAID: HEADING 5607 VERSUS HEADING 5808

As noted above, the distinction between braid of heading 5607 and braid of heading 5808 is primarily in the structure of the braid. Braid that is tightly plaited and has a compact structure is to be classified in heading 5607, while the less compact, not tightly plaited braid is to be classified in heading 5808. This guideline leaves much room for interpretation. In administrative rulings and informal opinions given to Customs field officers, flat braids (such as certain types of shoe-lace material) have generally been considered as not having a compact structure and thus have been classified in heading 5808. Braids for which it is difficult to say whether they are tight and compact, but which are primarily decorative in nature (for instance, those having decorative-type metalized threads) have been classified in heading 5808, which is judged also to cover materials that are more decorative in nature.

Braid which is classified in heading 5808 has been considered to be a "fabric." This becomes significant when deciding where to classify articles made up of such materials.

"OF WIDE NONFIBRILLATED STRIP"

HTS 5607.41.10 and 5607.49.10 provide for rope etc. made of wide nonfibrillated strip. The term "*wide*" means that the strip is more than 25.4 mm (1") wide in its unfolded, untwisted and uncrimped condition. But there has been some question of what is meant by "nonfibrillated."

Ruling HQ 083629 establishes that a fibrillated strip is one that is split into **VISIBLE** interconnecting fibrils (fiber-like tears or splits that run along the lengthwise direction of the material).

Nonfibrillated strip is strip (over 1" wide) which, when carefully untwisted, is found to be intact, i.e., *not* split into visible interconnecting fibrils. Merely having its molecules oriented does not make a strip "fibrillated" (HQ 083894 follows the same principle). The term "of wide nonfibrillated strip", when applied to twine, cordage, rope or cable, refers to that which contains more than 65 percent by weight of nonfibrillated strip.

TABLE 3.1 CLASSIFYING TEXTILE YARNS, TWINE, CORDAGE, ROPE AND CABLE

Yarns are classified according to their characteristics (measurement, whether or not polished or glazed, number of plies) in those headings of Chapters 50 to 55 relating to yarns, as twine, cordage, rope or cables under heading 56.07, or as braids under heading 58.08. This table shows the correct classification in each individual case:

Type (*)	Characteristics determining classification	Classification
Reinforced with metal thread	In all cases	Heading 56.07
Of metallised yarn	In all cases	Heading 56.05
Gimped yarn, other than those of headings 51.10 and 56.05, chenille yarn and loop wale yarn	In all cases	Heading 56.06
Braided textile yarn	(1) Tightly plaited and with a compact structure (2) Other	Heading 56.07 Heading 58.08
Other: — Of silk or waste silk (**)	(1) Measuring 20,000 decitex or less (2) Measuring more than 20,000 decitex	Chapter 50 Heading 56.07
— Of wool or other animal hair	In all cases	Chapter 51.

Type (*)	Characteristics determining classification	Classification
- Of flax or true hemp	(1) Polished or glazed: (a) Measuring 1,429 decitex or more (b) Measuring less than 1,429 decitex (2) Neither polished nor glazed: (a) Measuring 20,000 decitex or less (b) Measuring more than 20,000 decitex	Heading 56.07 Chapter 53 Chapter 53 Heading 56.07
- Of coir	(1) Of one or two plies (2) Of three or more plies	Heading 53.08 Heading 56.07
- Of paper	In all cases	Heading 53.08
- Of cotton or other vegetable fibers	(1) Measuring 20,000 decitex or less (2) Measuring more than 20,000 decitex	Chapter 52 or 53 Heading 56.07
- Of man-made fibers (including those yarns of two or more monofilaments of Chapter 54 (**))	(1) Measuring 10,000 decitex or less (2) Measuring more than 10,000 decitex	Chapter 54 or 55 Heading 56.07

Footnotes.

(*) References to the various textiles materials apply also to such mixtures as are classified therewith under the provisions of Note 2 to Section XI (see Part (I) (A) of this General Explanatory Note).

(**) Silk worm gut of heading 50.06, multifilament yarn without twist or with a twist of less than 5 turns per metre, and monofilament, of Chapter 54, and man-made filament tow of Chapter 55 do not in any circumstances fall in heading 56.07

4. SILK FILAMENTS, FIBERS & YARNS OF CHAPTER 50

Silk is the only organic fiber that is in the form of a filament, and it is produced by the silkworm. In spinning its cocoon for its metamorphosis from the chrysalis state, the silkworm forms in its internal glands a glutinous liquid composition of fibroin and sericin which it discharges through two external orifices called "spinnerets" located below its mouth. When emitted, the two threads combine into a single thread and harden immediately upon exposure to air. The filaments adhere to each other to form the cocoon shell.

After the cocoons are harvested, they are "reeled" by placing them in a basin of hot water to loosen the filaments, pulling the filament ends of several cocoons (typically 4 to 20 of them) together, and winding them up onto a "reel." In this process, the several filaments twist together slightly, and adhere to each other because of the natural gum on their surface. This reeling process results in a single "thread" of silk, which is classified as raw silk in heading 5002. It appears to the unaided eye to be a single filament, but in actuality it is composed of several very fine fila-

ments. "Thrown" silk (of heading 5004) consists of yarns obtained by twisting (either singly or two or more together) the raw silk threads of heading 5002.

5. WOOL & HAIR FIBERS & YARNS OF CHAPTER 51

OUTLINE OF THE WOOL PRODUCTION PROCESS

Following is a summary of the usual steps in the processing of first quality wool from sheep to yarn. Not every type of wool or hair will go through all of these steps; this is intended as more of a generic listing of the possible steps:

- (1) *Shearing* is cutting the wool from the sheep by hand or mechanical means. Wool at this stage is called "grease" wool because the natural oil of the sheep remains in the wool. "Shorn" wool is cut in this manner from either the live sheep or from the pelt of the dead animal; "pulled" wool is pulled from the pelt of the dead animal after fermentation or appropriate chemical treatment.
Tariff classification at the end of this stage would be somewhere in the following ranges: 5101.11.10-5101.21.40, 5101.29.10-5101.29.40.
- (2) *Trimming* is cutting off the poorer quality edges so the grade that is to be shipped is roughly uniform.
This stage of processing would not change the tariff classification from what it was after shearing.
- (3) *Separation according to quality*, in some cases, is done at the time of shearing.
This stage of processing would not change the tariff classification from what it was after shearing and trimming
- (4) *Packaging* of the raw shorn wool consists of rolling it up, tying and packing it loosely in sacks weighing about 225 to 300 pounds, for shipment to mills.
This stage of processing, would not change the tariff classification from what it was after shearing trimming and separation.
- (5) *Sorting and Grading* is done by skilled workers who determine grades by type, length, fineness, elasticity and strength.
This stage of processing would not change the tariff classification from what it was after shearing trimming separating and packaging
- (6) *Scouring* consists of a thorough washing in warm water, soap and a mild solution of soda ash or other alkali, to remove natural oils (grease, also known as "yolk") and vegetable matter. This causes the raw wool to lose from 20 to 80 percent of its original weight. After scouring, rollers are used to squeeze out water.

Alternatives to scouring include *washing* in hot water only, to remove most grease and dirt; *treatment with volatile solvents* such as benzene to remove grease; or *frosting* to freeze the wool and remove the grease in a brittle state.

This stage of processing would not change the tariff classification from what it was after shearing, trimming, separating, packaging, sorting and grading.

- (7) The "de-greasing" process contemplated by the tariff occurs in step (6) above in the water, detergent and alkaline baths, and is fully completed at the time the water rinse (the fifth bath in the schematic) occurs. After this process is completed, optional mothproofing and/or bleaching agents may be introduced. They are, in other words, steps that advance the wool beyond the de-greased condition.

Tariff classification at the end of this stage: 5101.21.60 or 5101.29.60.

- (8) Carbonizing occurs if the wool is not sufficiently clear of vegetable matter after scouring, and consists of a dilute acid bath which burns out the foreign matter.

Tariff classification at the end of this stage: 5101.30.10-5101.30.40.

- (9) Drying is controlled so that the wool retains about 12 to 16 percent of the moisture that was added, to condition it for further handling. *This stage of processing would not change the tariff classification from what it was after carbonizing*

- (10) Oiling consists in treating the wool with various oils, to keep it from becoming brittle and to lubricate it for the spinning operation.

Tariff classification at the end of this stage: 5101.30.60.

- (11) Dyeing may be done after oiling and before further processing, but in some cases wool may be dyed at the top, yarn or fabric stages.

Tariff classification at the end of this stage: 5101.30.60.

- (12) Blending of different grades of wool may be done (optionally) at the next stage.

This tariff classification at the end of this stage may or may not change, depending on which types of fiber are blended (see Chapter 51 Additional US Note 2(e) regarding "unimproved" wool).

- (13) Carding serves to disentangle the fibers to prepare them for spinning, and is done by passing the fibers between rollers covered with fine wire teeth. This stage produces wool in the form of loose, untwisted, rope-like "sliver," ready for spinning into yarn. Yarn that is spun from carded wool is known as "woolen" yarn.

Tariff classification at the end of this stage: 5105.10.

- (14) Gilling and Combing are additional processes used only in the production of smoother "worsted" yarns. It consists of further drawing of the fibers along fine-toothed combs, to remove the shorter fibers and further align the longer ones, to produce "tops," a smoother, more uniform sliver suitable for spinning into "worsted" yarns.

Tariff classification at the end of this stage: 5105.21-5105.29

OUTLINE OF THE CASHMERE PRODUCTION PROCESS

Let us take a look at a variation on the wool process involving a fine animal hair such as cashmere:

- (1) *Shearing or Combing* serve to remove the wool from the cashmere goat.

Shearing consists simply of cutting the hair off the animal with shears. Under this method, both the desirable underdown and the undesirable coarser "guard" hair are removed in the same proportion in which they existed on the animal.

The more commonly used combing method removes hair by pulling a comb through the animal's hair; this tends to remove a larger proportion of underdown and leave more of the coarser hair on the animal. Thus, combing results in a product which has a higher percentage of underdown than does shearing.

Tariff classification at the end of this stage: 5102.10.40.

- (2) *Separation according to quality*, in some cases, is done at the time of shearing. The sorting is generally according to:

the color (the whiter the color, the higher the value),
length of staple fiber (longer length has higher value),
fiber fineness (the lower the fiber diameter in microns, the higher the "grade," the finer the fiber and the higher the value), and

the percentage yield of underdown (higher percentage yield has higher value—cashmere removed by combing generally has a yield in the range of 50%, while that removed by shearing has a yield of around 25%).

Tariff classification at the end of this stage: 5102.10.40.

- (3) *Scouring* consists of washing the hair in a series of four baths to remove grease and other foreign matter. There generally are three sequential baths of detergent and hot water, followed by a final rinse bath with water only. If desired by the customer, bleaching is added during one of the baths. These four baths achieve disinfecting as well as physical cleaning, although sometimes if there is a danger of anthrax, a fifth bath of formaldehyde is used.

Tariff classification at the end of this stage: 5102.10.40.

- (4) *Pre-opening*

Tariff classification at the end of this stage: 5102.10. 40.

- (5) *Dehairing* serves to separate the coarser guard hairs from the desirable underdown hairs. Dehairing machines are modified carding type machines that operate primarily on the principle that the coarse guard hairs are heavier than the fine underdown. When the co-mingled mass of fine and coarse fibers are presented to the dehairing machine, the centrifugal force of the high RPM carding rolls throws the heavier coarse hairs underneath the de-hairer while the

finer underdown travels through the machine. After dehairing, the expected coarse hair content is only 0.1% to 3.0%.

Because of the type of process that occurs, some would argue that dehairing is a carding process, but Customs' position (HQ 950906) is that it is not. The process does, however, advance the fiber beyond the de-greased or carbonized condition. It also greatly increases the value or price of the fiber.

Tariff classification at the end of this stage: 5102.10.90.

- (6) There is generally no carding process for cashmere (although some would argue that dehairing is a process similar to carding). *Comb-ing* follows dehairing, and consists of further drawing the fibers along fine-toothed combs, to remove the shorter fibers and further align the longer ones, to produce "tops," suitable for spinning into yarns. The shorter fibers that are thrown off in this process are known as "noils."

Tariff classification at the end of this stage: 5105.30.00.

OTHER ANIMAL HAIRS

Camel hair, produced chiefly in China, Mongolia and the CIS (former Soviet Union), is subject to similar processes as cashmere; valuable underdown must be separated from coarser hairs. It must be scoured and dehaired for commercial use.

Cashgora is a hybrid goat fiber resulting from the cross-breeding of cashmere and mohair-type goats, produced commonly in New Zealand, the CIS, Turkey and Mongolia. It is subject to similar processes as cashmere and camel hair.

Angora rabbit hair is produced in China, and is different from Cashmere in that its coarse hairs are not necessarily objectionable, so that in most cases the fiber is used without dehairing.

NOTES ON YIELD AND CONDITIONED WEIGHT FOR WOOL

Certain duties in Chapter 51 are based on the "clean kg.," which is the clean yield in kilograms. The HTSUSA defines "*clean yield*," except for purposes of carbonized fibers, as the absolute clean content (i.e., all that portion of the merchandise which consists exclusively of wool or hair free of all vegetable and other foreign material, containing by weight 12 percent of moisture and 1.5 percent of material removable from the wool or hair by extraction with alcohol, and having an ash content of not over 0.5 percent by weight), less an allowance, equal by weight to 0.5 percent of the absolute clean content plus 60 percent of the vegetable matter present, but not exceeding 15 percent by weight of the absolute clean content, for wool or hair that would ordinarily be lost during commercial cleaning operations. For purposes of carbonized fibers, the term "*clean-yield*" means in the condition as entered.

Wool is often bought on the basis of "*conditioned weight*," which is the dry weight plus a fixed percentage of expected moisture content by percent of weight, or "*moisture regain*." This is usually 15% to 18% depending on the system employed. A term such as "conditioned at 17%" for a

wool purchase would indicate that the fiber was bought on the basis of a moisture regain of 17%. Under CIE 1235/57 (which, although written under the previous valuation system and before the HTS, still is instructive), valuation was based on the price per conditioned kilogram, while any specific duty rate was assessed against the actual landed net weight in kilograms, adjusted for clean yield.

TABLE 5.1 GRADES OF WOOL FIBER

The HTS has separate provisions for wool based on its grade, which is a number which expresses the fineness of the fibers. The grade is a standard unit of measurement which is *not* the same as the fiber diameter in microns. It can be related to the fiber diameter in microns as shown on the following table.

Grade	Average Fiber Diameter, μm	Max Standard Deviation, μm
Finer than 80s	under 17.70	3.59
80s	17.70 to 19.14	4.09
70s	19.15 to 20.59	4.59
64s	20.60 to 22.04	5.19
62s	22.05 to 23.49	5.89
60s	23.50 to 24.94	6.49
58s	24.95 to 26.39	7.09
56s	26.40 to 27.84	7.59
54s	27.85 to 29.29	8.19
50s	29.30 to 30.99	8.69
48s	31.00 to 32.69	9.09
46s	32.70 to 34.39	9.59
44s	34.40 to 36.19	10.09
40s	36.20 to 38.09	10.69
36s	38.10 to 40.20	11.19
Coarser than 36s	over 40.20	

(Based on the Official Standards of the United States for Grades of Wool as promulgated by the U.S. Department of Agriculture, effective January 1, 1966.)

6. COTTON FIBER & YARNS OF CHAPTER 52

COTTON FIBER PRODUCTION

Cotton fiber that has not been carded or combed is generally classified according to staple length. In some cases, the variety of cotton is

also significant. Before we discuss the complex scheme of classifications and quotas that apply to raw cotton, it might be helpful to summarize the usual steps in the process of making cotton yarn from raw fiber:

- (1) *Harvesting:* Cotton is picked in the form of "bolls" from the cotton plant. At this point the cotton is in small clusters 1 to 1½ inches in diameter, which include seeds and other undesired plant material, and is referred to as "seed cotton."

Tariff heading at the end of this stage: 5201.

- (2) *Ginning:* The next step in cotton processing is to remove the seeds, using a cotton gin. The product of this process is sometimes referred to as "lint cotton" or "ginned cotton."

After separation from the cotton fibers by ginning, the seeds are still covered with a fine down formed of very short fibers (usually less than 5 mm long), known as "cotton linters." Linters are too short for spinning, but are used in the manufacture of man-made fibers (e.g., rayon), cellulose plastics, certain varieties of paper, filter blocks and as a filler in the rubber industry.

Tariff heading at the end of this stage: 5201. Linters in subheading 1404.20.

- (3) *Baling:* Lint cotton is baled at the cotton gin after the seeds have been removed. The bale supplied to textile mills averages 500 pounds in weight.

Tariff heading at the end of this stage: 5201.

- (4) *Blending:* Cotton taken from a number of bales is blended together and separated into large tufts.

Tariff heading at the end of this stage: 5201.

- (5) *Cleaning:* In the step cleaner, large tufts of cotton are reduced in size and quantities of trash (stems, leaf and seed fragments etc.) are removed. In the opener-cleaner, tufts are further reduced in size and fluffed, and large quantities of trash are removed.

Tariff heading at the end of this stage: 5201.

- (6) *Picking:* Trash removal is continued, and small tufts are formed into a continuous sheet known as "picker laps," which are approximately 40 inches wide and 1 inch thick and weigh about 40 pounds each.

Tariff heading at the end of this stage: 5201.

- (7) *Carding:* The picker lap is processed into a thin mist-like sheet which is formed into a loose rope-like strand of fibers known as "card sliver."

Tariff heading at the end of this stage: 5203.

- (8) *Combing:* If the fiber is intended for finer yarns, it is put through an additional straightening, in which fine-toothed combs continue straightening the fibers until they are highly parallel. This process

results in "comb sliver," which appears smoother and finer than card sliver.

Tariff heading at the end of this stage: 5203.

- (9) *Drawing:* A number of card slivers are brought together and drawn out to form a single rope-like strand known as "drawn sliver," having straightened fibers and improved uniformity.

Tariff heading at the end of this stage: 5203.

- (10) *Roving:* The drawn sliver is further drawn out into a smaller strand of fibers known as *roving*.

Tariff heading at the end of this stage: 5203.

- (11) *Spinning:* The roving is still further drawn out into a tiny strand of fibers and twisted into a yarn on either a ring spinning system or an open-end spinning system.

Tariff heading at the end of this stage: 5205-6.

A NOTE ON "HARSH OR ROUGH" COTTON

Despite much research, going back to hearing reports by the US Tariff Commission in the 1920's and also into various trade and industry publications (some crumbling and yellowing with age), we have been unable to find a definition for "harsh or rough" cotton. The variety of harsh or rough cotton that has a staple length of 29.36874 mm (1-5/32 inches) (see HTS 5201.00.24 and 5201.00.28) is identified in the background documents as Peruvian Tanguis cotton. But the harsh or rough cotton that has a staple length under 19.05 mm (¾ inch) classified under HTS 5201.00.05, is apparently a different variety and is not defined or described in the background documents.

Even contacts in the USDA could provide no definition of this term. Based on what little information is available, it appears that the term "harsh or rough" has nothing to do with impurities, and something to do with the crinkliness of the fibers. However, USDA contacts did indicate that cotton with a staple length of less than ¾" is extremely rare, and would probably be found only in the Indian subcontinent. Since the term was created by USDA in 1939, without any apparent definition or guidelines, and since there was mention in the 1958 Tariff Commission study to the effect that USDA will test for this, our approach, as far as lab-testing is concerned, should be to leave the determination up to USDA in all cases by having Customs labs refer that type of testing to Agriculture Department labs.

WASTE PRODUCTS FROM COTTON FIBER PROCESSING

At each of the above stages of processing, there are cotton fibers and other byproducts which are thrown off and recovered for other uses. Except for cotton linters discussed above, they are generally classified under heading 5202.

"Gin notes," sometimes referred to simply as "notes," are a by-product of the cotton ginning process, and consist of reclaimable cotton lint mixed with bits of leaves and bark (5202.9950) (Note: "regins" are gin

motes that have been put through a willowing and cleaning process, and are generally classified not as waste, but as cotton fiber of heading 5201).

"Picker motes" are the waste materials extracted during the opening, cleaning and picking processes. This waste contains the heavier trash such as stems, seeds, seed coat fragments, etc., and some fiber (5202.9950). It is marketable and usually used for padding.

"Picker lap waste" or *"lap waste"* occurs as the ends of the laps are removed from machines to ensure even and uniform splicing when replenishing the supply package fed later to the carding machinery. Lap waste is good cotton and is later blended in predetermined amounts with the regular mix (5202.9905, 5202.9910 or 5202.9930).

"Card strips" are a waste byproduct of the carding process. They include:

"Card cylinder and doffer strips" which are the fibers that gradually collect between the wires of the card clothing on the carding machine. This waste has to be removed periodically from the machine. It is used primarily by makers of coarse industrial yarns and fabrics.

"Card flat strips" includes fibers, neps (small knotted or tangled fiber fragments) and dirt that accumulate on the wire clothed flats during carding. As the flats revolve, the waste is removed so that a clean surface is presented to the carding cylinder. This waste is used primarily by makers of coarse yarns and fabrics.

"Card motes and fly" are waste removed from the picker lap by the combing action of the card. It is a much lower form of waste than the card strips described above, and is composed of very short fibers, seed coat fragments, dirt, etc. It is used in padding, mattresses and is occasionally used for blending into mixes for low grade coarse industrial yarns (5202.9950).

"Sliver waste" is a clean white waste that occurs at the carding, combing and drawing processes during the *"piecing-up"* or splicing operations (5202.9905, 5202.9910 or 5202.9930). It can be reworked by blending with raw stock in predetermined amounts.

"Noils" or *"comber noils"* are a byproduct of combing, and they are the short fibers which are combed out and completely separated from the longer fibers. It is used in blends for the manufacture of yarns and fabrics (5202.9950).

"Roving waste" is a clean white waste resulting from replenishing the supply packages in the spinning frame. It is reworkable by blending with the raw stock mix in small amounts (5202.9905, 5202.9910 or 5202.9930).

COTTON CLASSIFICATIONS AND QUOTAS: HTS CHAPTERS 52 AND 99

Under NAFTA and GATT, all of the past absolute quotas on cotton fiber and waste have been replaced with a system of tariff-rate quotas, which will be slowly phased out over time. In addition, the Secretary of

Agriculture, under certain market conditions, announces "Special" quotas for Upland Cotton. Following are outlines of the various types of cotton quotas, based on the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), as they apply to imports entered for the 1996 calendar/quota year.

■ Under *NAFTA*, the quantity of cotton imported duty-free from Mexico is 10,609,000 kilograms for 1996. This quantity will increase annually until the year 2003 when limitations will cease to apply on qualifying goods. Imports above 10,609,000 kilograms in 1996 will pay a higher tariff excluding harsh/rough cotton under 3/4 inches staple length which enters duty-free in unlimited quantities.

■ Under the *Uruguay Round Agreements Act*, Section 22 absolute quotas were replaced by tariff-rate quotas (TRQs) on January 1, 1995. TRQs are a two-tier tariff system under which a specified "in-quota" quantity of an article enters at lower "in-quota" tariff rates, and "over-quota" quantities enter at substantially higher "over-quota" rates. The "in-quota" quantity excludes imports from Mexico and from countries which are not members of the World Trade Organization (WTO), or which are not specifically listed in the quota. The "in-quota" TRQ quantities for cotton are listed under Additional U.S. Notes 5(b), 6(b), 7(b) and 8(b) of HTSUSA chapter 52. The in-quota quantity will increase annually until the year 2000, after which it will remain at the level reached in that year.

■ Under the *Special Cotton Import Quota*, a special quota on UPLAND cotton is triggered when the price conditions set forth in section 103B(a)(5)(F) of the Agricultural Act of 1949, as amended, are met, and the United States Department of Agriculture (USDA) issues an announcement which specifies a quantity that may be entered under HTSUSA 9903.5201—9903.5220 during a 180-day period following the effective date of such determination and announcement. Announcements may be made on a weekly basis. Imports must be accompanied by: (1) an original certificate from a foreign government agency official of the country of origin attesting that the cotton is of a variety of *Gossypium Hirsutum* (also known as Upland Cotton); (2) an importer certification that the cotton was purchased not later than 90 days after the quota was established; and (3) be entered under the terms and conditions in US Note 6(a) of Subchapter III of Chapter 99 of the HTSUSA. See last paragraph, below, on General Note 15 of the HTSUSA.

■ Under the *Special Limited Global Import Quota*, a special quota on UPLAND cotton is triggered when the price conditions set forth in section 103B(n) of the Agricultural Act of 1949, as amended, are met, and USDA issues an announcement which specifies that quantity that may be entered under HTSUSA 9903.5200 during a 90-day period following the effective date of such determination and announcement. Imports must be accompanied by: (1) an original certificate from a foreign government agency official of the country of origin attesting that the cotton is of a variety of *Gossypium Hirsutum* (also known as Upland

Cotton); (2) an importer certification that the cotton was purchased not later than 90 days after the quota was established; and (3) be entered under the terms and conditions in US Note 6(b) of Subchapter III of Chapter 99 of the HTSUSA. See last paragraph, below, on General Note 15 of the HTSUSA.

■ *General Note 15 of the HTSUSA* states that whenever a product of chapter 52 is (1) subject to a TRQ (the NAFTA or Uruguay Round quotas), and (2) subject to provisions of subchapter IV of Chapter 99 HTSUSA (the Secretary of Agriculture's "Special" quotas), entries of such products *shall not be counted* against the quantities specified as the in-quota TRQ quantity. General Note 15(e) specifically lists as an exclusion "cotton entered under the provisions of US Note 6 to Subchapter III of Chapter 99 and subheadings 9903.5200 through 9903.5220 inclusive." Such imports count against the special quota quantity of HTSUSA 9903.5200 through 9903.5220 which are in the USDA announcement(s). Imports are dutiable at the tariff rates under 5201.0012, 5201.0022 or 5201.0055 depending on staple length.

See the current HTSUSA and the Informed Compliance Publication *Raw Cotton: Tariff Classification and Import Quotas*, dated May 13, 1996, for more details.

COTTON YARNS

Most of the types of distinctions that matter in classification of cotton yarns have already been discussed. This includes the (metric) cotton yarn number, whether the yarn is sewing thread or is put up for retail sale, and whether it is plied. The remaining question is whether a yarn is uncombed or combed.

Uncombed cotton yarns are those made from the *carded* fibers described above. These fibers have been subjected to carding which serves to roughly align the fibers. Under magnification, these yarns will appear to have rough edges with some stray fibers and some which are not quite parallel.

Combed cotton yarns are those made from the combed cotton fibers. These fibers have been subject to an additional process which removes the shorter fibers and more perfectly aligns the fibers that remain. This results in a smoother appearance than that of carded yarns.

The tariff subheading outline on the following page is intended to serve as a guide to classifying cotton yarns "at a glance" at the six-digit (subheading) level. Refer to discussions earlier in this booklet, for definitions of the key terms.

TABLE 6.1 COTTON YARNS AT A GLANCE: HTS 6-DIGIT SUBHEADINGS

(all yarn number measurements are per single yarn)

5204 COTTON SEWING THREAD, WHETHER OR NOT PUT UP FOR RETAIL SALE:

Not put up for retail sale:

5204.11 Containing 85% or more by weight of cotton

5204.19 Other

5204.20 Put up for retail sale

5205 COTTON YARN (OTHER THAN SEWING THREAD), CONTAINING 85% OR MORE BY WEIGHT OF COTTON, NOT PUT UP FOR RETAIL SALE:

Metric Yarn Number	English Yarn Number	Single, not combed	Single, combed	Plied, not combed	Plied, combed
$nm \leq 14$	$ne \leq 8.27$	5205.11	5205.21	5205.31	5205.41
$14 < nm \leq 43$	$8.27 < ne \leq 25.39$	5205.12	5205.22	5205.32	5205.42
$43 < nm \leq 52$	$25.39 < ne \leq 30.71$	5205.13	5205.23	5205.33	5205.43
$52 < nm \leq 80$	$30.71 < ne \leq 47.24$	5205.14	5205.24	5205.34	5205.44
$80 < nm \leq 94$	$47.24 < ne \leq 55.51$	5205.15	5205.26	5205.35	5205.46
$94 < nm \leq 120$	$55.51 < ne \leq 70.87$	5205.15	5205.27	5205.35	5205.47
$nm > 120$	$ne > 70.87$	5205.15	5205.28	5205.35	5205.48

5206 COTTON YARN (OTHER THAN SEWING THREAD), CONTAINING LESS THAN 85% BY WEIGHT OF COTTON, NOT PUT UP FOR RETAIL SALE:

Metric Yarn Number	English Yarn Number	Single, not combed	Single, combed	Plied, not combed	Plied, combed
$nm \leq 14$	$ne \leq 8.27$	5206.11	5206.21	5206.31	5206.41
$14 < nm \leq 43$	$8.27 < ne \leq 25.39$	5206.12	5206.22	5206.32	5206.42
$43 < nm \leq 52$	$25.39 < ne \leq 30.71$	5206.13	5206.23	5206.33	5206.43
$52 < nm \leq 80$	$30.71 < ne \leq 47.24$	5206.14	5206.24	5206.34	5206.44
$nm > 80$	$47.24 < ne \leq 55.51$	5206.15	5206.25	5206.35	5206.45

5207 COTTON YARN (OTHER THAN SEWING THREAD) PUT UP FOR RETAIL SALE:

5207.10 Containing 85% or more by weight of cotton

5207.90 Other

7. VEGETABLE FIBERS & YARNS OF CHAPTER 53; PAPER YARNS

CLASSIFYING VEGETABLE FIBERS

It is very important to recognize that headings 5301-5305 are not uniform as to what types of vegetable materials are covered. Some vegetable materials are covered throughout the full range, from plants as harvested, through to fibers ready for spinning; while other materials are more limited, as follows:

Headings 5301-5302 (flax or true hemp) *may be either in the condition as harvested (raw), or processed somewhat beyond the raw state.* They may be in condition ready for spinning, but they may not be spun (see yarns, below).

Heading 5303 (jute and other textile bast fibers except for flax, true hemp and ramie), *covers the stalks of these plants, as well as more advanced products* (but not spun yarns). Generally (see exception below for broom fibers), the products of heading 5303 may be the raw stalks removed from the stems, or may be crushed, carded or combed in preparation for spinning. Included in this group, as listed in the Explanatory Note (alphabetized here for convenience), are:

Abroma augusta	Dah	Nettles
Abutilon hemp	Devil's cotton	Paka
Abutilon avicennae	Escobilla	Papoula de Sao Francisco
Ambari hemp	Gambo hemp	Polompon
Aramina	Guaxima	Punga
Benares hemp	Guaxima	Queensland hemp
Bimlipatam	Hibiscus cannabinus	Red jute
Bimli jute	Hibiscus hemp	Rosella hemp
Bombay hemp	Hibiscus sabdariffa	Roselle
Cadillo	Indian flax	Siam jute
Caesarweed	Indian	Siam jute
Calcutta hemp	Java jute	Sida
Carapicho	Julburpur jute	Sunn
China jute	Kenaf	Thespesia
Ching-ma	Kenaf	Tien-Tsin
Clappertonia ficifolia	King-ma	Tossa
Congo jute	Madagascar jute	Triumfetta
Corchorus olitorius	Madras hemp	True jute
Corchorus capsularis	Malva roxa	Urena sinuata
Crotalaria juncea	Malva blanca	Urena lobata
Cuba jute	Malvaisco	White jute
	Meshta	

The group (heading 5303) also includes broom fibers, from the bast of the Spanish broom (*Spartium junceum*) or common broom (*Cytisus scoparius*), except that broom fibers and other bast fibers that are NOT of a kind usually used for textiles are covered in chapter 14; they fall in 5303 ONLY IF they have been crushed, carded or combed in preparation for spinning (see "spinning" guidelines in discussion of headings 5304-5305, below).

Headings 5304-5305 cover certain vegetable materials obtained from the leaves of Sisal, genus Agave, Abaca, Coconut and various other plants, as well as ramie, which is obtained from the stalk of its plant. Included in this group, as listed in the Explanatory Note (alphabetized here for convenience), are:

Abaca	China grass bast	Peat fibre *
Agave lechugilla *	Coconut	Phormium tenax
Agave cantala	Coir	Pina
Agave tequilana	Colombia pita	Pineapple fibres
Agave funkiana *	Curana	Pita floja
Agave americana	Esparto *	Pita
Agave fourcroydes	Furcraea gigantea	Piteira
Agave sisalana	Green ramie bast	Ramie
Agave foetida	Haiti hemp	Rhea bast
Alfa *	Henequen	Sansevieria
Aloe fibre	Ife hemp	Silkgrass
Arghan	Istle *	Sisal
Berandine *	Ixtie *	Tampico *
Beraudine peat *	Karates	Typha *
Boehmeria nivea bast	Magucy	White ramie bast
Boehmeria tenacissima bast	Manila hemp	Yucca
Bowstring hemp	Mauritius hemp	
Bromeliaceae family	Mexican hemp *	
Cantala	Musa textilis Nee	
Caroa	New Zealand flax	
Cattail plant fibre*	New Zealand hemp	

These headings cover fibers obtained from leaves, or, in the case of ramie, fibers obtained from the stalks (the plants themselves or the untreated leaves would remain in chapter 14) Processes differ for the various plants, but in all cases the raw material must be broken down into fiber form to be classified here (these fibers may be relatively short like cotton or wool, or they may be filaments several meters long). However, CERTAIN materials (those asterisked in the above list, and any other vegetable materials not enumerated in the Explanatory Note) go in these headings only if they are treated in a manner indicating their use for textile purposes. Generally, this would mean that they have been carded or combed in preparation for spinning. This means that the stalks or leaves have been (1) broken down into fine fibers; and (2) carded, combed or aligned in parallel fashion (in a form commonly known as tow, rovings or sliver).*

CLASSIFYING YARNS, BRAIDS AND FABRICS OF VEGETABLE FIBERS

Heading 5306-5308 vegetable fiber yarns *must be made of spun vegetable fibers*. To be "spun," the stalks or leaves must have been (1) broken down into fine parallel fibers, commonly known as tow, rovings or sliver; (2) carded, combed or aligned in parallel fashion in some manner, and (3) caused to adhere to each other by means of spinning or twisting. So-called "yarns" that are made of "unspun" vegetable materials (i.e., that have *not* been broken down into fibers), even if these materials are

twisted together, *are not classified as yarns*, but remain in headings 5301-5305 or in chapter 14, as appropriate. Because they are not "yarns," these twisted unspun vegetable materials cannot be classified as twine, cordage, rope or cable in heading 5607 either, even if they meet the decitex requirements.

Spun vegetable fibers (yarns) that meet the definition of twine, cordage, rope or cable are classified in heading 5607. Otherwise they fall in headings 5306-5308.

Spun vegetable fibers (yarns) that are *braided* would be classified in headings 5607 or 5808, depending on the tightness of the braid.

Other braided vegetable materials (i.e., those that have not been broken down into fibers) would probably be classified in chapter 46.

Similarly, if a fabric is woven from *spun yarns* of headings 5306-5308, it would be classified in headings 5309-5311. If a fabric is woven from *unspun* vegetable material of headings 5301-5305, it cannot be classified in chapter 53.

PAPER YARN

Paper yarns are separately provided for in heading 5308, by means of a separate description in the heading language, after a semicolon, for "paper yarn." According to the Explanatory Notes, paper yarns are obtained by twisting/rolling lengthwise strips of moist paper, but not simply by folding paper one or more times lengthwise. Note that these criteria are entirely different from those for vegetable fibers yarns and products thereof discussed above. Paper yarn is not considered yarn of vegetable fibers; it just happens to have been placed in the same chapter as vegetable fibers. Do not confuse the criteria for vegetable fiber yarns (must be made of spun vegetable fibers), with those for paper yarns (must be made by twisting/rolling lengthwise strips of moist paper).

8. MAN-MADE FILAMENT, STRIP & STAPLE FIBERS, AND YARNS THEREOF

MAN-MADE FILAMENTS AND FIBERS

Note 1 to Chapter 54 defines *man-made fibers* as staple fibers and filaments of organic polymers produced either by polymerization of organic monomers or by chemical transformation of natural organic polymers.

Man-made fibers are further subdivided into two broad classes based on the production process used to obtain them. "*Synthetic*" man-made fibers are produced by polymerization of organic monomers (an organic molecule is a chemical that contains carbon and was derived originally from living matter). In general these monomers are derived from petroleum distillates and the process involves the linking together of the monomers by chemical means. For example the organic monomer ethylene is connected in a continuous chain of repeating ethylene monomers to form polyethylene which is extruded through a spinneret to form a polyethylene fiber.

The second class of man-made fibers are the "artificial" man-made fibers. These fibers are produced by transforming natural organic polymer. In other words, these products existed as polymers in the natural state such as cellulose in wood and are broken down and reassembled in artificial fibers. Since they had a preexistence as polymers, their manufacturing process is distinctly different.

The Explanatory Notes to chapter 54 provides a list of the most common "synthetic fibers which include acrylic, modacrylic, polypropylene, nylon and other polyamides, polyester, polyethylene, polyurethane, triviny, and vinylal. Among the "artificial" fibers are three subclasses. "Artificial" cellulosic fibers include viscose rayon, cuprammonium rayon, and cellulose acetate including tri-acetate. The second subclass of "artificial" man-made fibers are derived from protein from plant and animal sources. These include casein, a derivative of milk, and fibers produced from corn soya bean and nut proteins. The last subclass of "artificial" man-made fibers are the alginate fibers which are derived from seaweed and are based on calcium alginate.

Man-made fibers are also differentiated by their physical form. Chapter 54 provides for man-made filaments and Chapter 55 man-made staple fibers. Staple man-made fibers are in general short fibers usually measuring 25 to 180 millimeters in length which have been cut from continuous filament man-made fibers. The short fibers are then in most cases spun into yarns. Man-made filaments are continuous fibers which have been produced by extruding the polymerized chemical through spinnerets and are often miles in length.

Since only organic polymers may be considered man-made fiber, several types of yarn and fabric which one might think of as man-made fiber are not considered such under the HTS. The most obvious examples of this are glass fiber yarns and fabrics and carbon fiber yarns and fabrics. Note 1(r) of Section XI excludes glass fibers and articles of glass fibers from the textile section. Similarly Note 1(q) of Section XI excludes carbon fibers and articles of carbon fiber from the textile section.

MAN-MADE FIBER AND FILAMENT PRODUCTION

Generally, production of man-made fibers or filaments begins with bringing the raw materials to a liquid state. In the case of synthetic polymers, this is done by subjecting them to high temperatures. In the case of cellulosic materials, the method generally involves creating a solution of the cellulosic raw materials such as wood pulp and a solvent. The materials in this liquid state are then subject to an extrusion process.

The process of extrusion is sometimes called "*spinning*," a term borrowed from the sericulture industry because it finds its analogue in the process employed by the silkworm in spinning its cocoon. The silkworm forms in its internal glands a liquid solution which it discharges through two external orifices called "spinnerets" located below its mouth. When emitted, the two threads combine into a single thread and harden immediately upon exposure to air. In much the same way, the

spinning solution is conveyed to the so-called spinning frame which consists of rows of jetholders carrying spinning nozzles at their extremities. These nozzles consist of metal caps made of a hard, noncorrosive, light-weight, precious metal or alloy. They are perforated with circular, concentrically-arranged openings of almost microscopic size, ranging from three to five one-thousandths of an inch in diameter. Corresponding as they do to orifices of the silkworm, they are also called "spinnerets."

The apertures of the spinnerets vary in shape according to whether filaments or ribbon-like bands are to be produced. If the former, they vary in size according to the denier of the yarn or fibers desired. By varying the number and size of the spinneret openings, there are produced fine yarns and spinning yarns on the one hand, and coarse monofilaments on the other.

For some materials, the liquid or the solution is forced through the tiny holes of spinnerets into an acid bath, which causes the material to solidify ("regenerate") into continuous filament. Other materials will solidify upon exposure to water or to air, or to lower temperatures.

After extrusion, washing and finishing, filaments are generally wound onto spools and may later be put up on warp beams to be used in weaving.

MAN-MADE STAPLE FIBER PRODUCTION

Man-made staple fibers are generally made by cutting filaments into shorter lengths.

The filament is first produced in the form of *tow*, which is a large group of untwisted strands (tariff definition: "Headings Nos. 55.01 and 55.02 apply only to man-made filament tow, consisting of parallel filaments of a uniform length equal to the length of the tow, meeting the following specifications: (a) Length of tow exceeding 2 m; (b) Twist less than 5 turns per meter; (c) Measuring per filament less than 67 decitex; (d) Synthetic filament tow only: the tow must be drawn, that is to say, be incapable of being stretched by more than 100% of its length; (e) Total measurement of tow more than 20,000 decitex."). If the tow meets all of these criteria except length, it would be classified in heading 5503 or 5504.

The tow is then either cut or broken into shorter lengths, the length depending on what is required for the particular lot of staple fiber being produced. The staple fiber that results, then needs to be further processed in order to become yarn. It is notable, however, that there is a "*tow-to-top*" process for man-made fibers, whereby the normal carding and combing steps are skipped and a sliver-like product ("*tops*") is produced directly. Whatever the method by which these "*tops*" are produced, the material will then be subject to processes similar to those that either cotton or wool fibers undergo in order to become yarns.

MAN-MADE FIBER YARNS

Filament or staple fiber yarns are produced from man-made filaments or man-made staple fibers, in much the same way that silk yarns

are twisted from grouped silk filaments, or cotton or wool yarns are produced from carded or combed fibers. The tariff subheading outlines on the following two pages are intended to serve as a guide to classifying man-made filament and fiber yarns "at a glance" at the six-digit (subheading) level. Refer to discussions earlier in this booklet, for definitions of the key terms. All of the key terms found in the man-made filament and man-made fibre chapters have been defined earlier in this booklet.

TABLE 8.1 MAN-MADE FILAMENT YARNS AND STRIPS AT A GLANCE

5401	SEWING THREAD OF MAN-MADE FILAMENTS, WHETHER OR NOT PUT UP FOR RETAIL SALE.
5401.10	Of synthetic filaments
5401.20	Of artificial filaments
5402	SYNTHETIC FILAMENT YARN (OTHER THAN SEWING THREAD), NOT PUT UP FOR RETAIL SALE, INCL. SYNTHETIC MONOFILAMENT OF LESS THAN 67 DECITEX.
5402.10	High tenacity yarn of nylon or other polyamides
5402.20	High tenacity yarn of polyester
	Textured yarn:
5402.31	Of nylon or other polyamides, measuring per single yarn not more than 50 tex
5402.32	Of nylon or other polyamides, measuring per single yarn more than 50 tex
5402.33	Of polyesters
5402.39	Other
	Other yarn, single, untwisted or with a twist not exceeding 50 turns per metre:
5402.41	Of nylon or other polyamides
5402.42	Of polyesters, partially oriented
5402.43	Of polyesters, other
5402.49	Other
	Other yarn, single, with a twist exceeding 50 turns per metre:
5402.51	Of nylon or other polyamides
5402.52	Of polyesters
5402.59	Other
	Other yarn, multiple (folded) or cabled:
5402.61	Of nylon or other polyamides
5402.62	Of polyesters
5402.69	Other

5403 ARTIFICIAL FILAMENT YARN (OTHER THAN SEWING THREAD), NOT PUT UP FOR RETAIL SALE, INCL. ARTIFICIAL MONOFILAMENT OF LESS THAN 67 DECITEX.

- 5403.10 High tenacity yarn of viscose rayon
- 5403.20 Textured yarn
 - Other yarn, single:
- 5403.31 Of viscose rayon, untwisted or with a twist not exceeding 120 turns per metre
- 5403.32 Of viscose rayon, with a twist exceeding 120 turns per metre
- 5403.33 Of cellulose acetate
- 5403.39 Other
 - Other yarn, multiple (folded) or cabled:
- 5403.41 Of viscose rayon
- 5403.42 Of cellulose acetate
- 5403.49 Other

5404 SYNTHETIC MONOFILAMENT OF 67 DECITEX OR MORE AND OF WHICH NO CROSS-SECTIONAL DIMENSION EXCEEDS 1 mm; STRIP AND THE LIKE (FOR EXAMPLE, ARTIFICIAL STRAW) OF SYNTHETIC TEXTILE MATERIALS OF AN APPARENT WIDTH NOT EXCEEDING 5 mm.

- 5404.10 Monofilament
- 5404.90 Other

5405 ARTIFICIAL MONOFILAMENT OF 67 DECITEX OR MORE AND OF WHICH NO CROSS-SECTIONAL DIMENSION EXCEEDS 1 mm; STRIP AND THE LIKE (FOR EXAMPLE, ARTIFICIAL STRAW) OF ARTIFICIAL TEXTILE MATERIALS OF AN APPARENT WIDTH NOT EXCEEDING 5 mm.

5406 MAN-MADE FILAMENT YARN (OTHER THAN SEWING THREAD), PUT UP FOR RETAIL SALE.

- 5406.10 Synthetic filament yarn
- 5406.20 Artificial filament yarn

TABLE 8.2 MAN-MADE STAPLE FIBER ("SPUN") YARNS AT A GLANCE

5508 SEWING THREAD OF MAN-MADE STAPLE FIBRES, WHETHER OR NOT PUT UP FOR RETAIL SALE.

- 5508.10 Of synthetic staple fibres
- 5508.20 Of artificial staple fibres

5509 YARN (OTHER THAN SEWING THREAD) OF SYNTHETIC STAPLE FIBRES, NOT PUT UP FOR RETAIL SALE.

- Containing 85% or more by weight of staple fibres of nylon or other polyamides:
- 5509.11 Single yarn
 - 5509.12 Multiple (folded) or cabled yarn
- Containing 85% or more by weight of polyester staple fibres:
- 5509.21 Single yarn
 - 5509.22 Multiple (folded) or cabled yarn
- Containing 85% or more by weight of acrylic or modacrylic staple fibres:
- 5509.31 Single yarn
 - 5509.32 Multiple (folded) or cabled yarn
- Other yarn, containing 85% or more by weight of synthetic staple fibres:
- 5509.41 Single yarn
 - 5509.42 Multiple (folded) or cabled yarn
- Other yarn, of polyester staple fibres:
- 5509.51 Mixed mainly or solely with artificial staple fibres
 - 5509.52 Mixed mainly or solely with wool or fine animal hair
 - 5509.53 Mixed mainly or solely with cotton
 - 5509.59 Other
- Other yarn, of acrylic or modacrylic staple fibres:
- 5509.61 Mixed mainly or solely with wool or fine animal hair
 - 5509.62 Mixed mainly or solely with cotton
 - 5509.69 Other
- Other yarn:
- 5509.91 Mixed mainly or solely with wool or fine animal hair
 - 5509.92 Mixed mainly or solely with cotton
 - 5509.99 Other

5510 YARN (OTHER THAN SEWING THREAD) OF ARTIFICIAL STAPLE FIBRES, NOT PUT UP FOR RETAIL SALE.

- Containing 85% or more by weight of artificial staple fibres:
- 5510.11 Single yarn
 - 5510.12 Multiple (folded) or cabled yarn
 - 5510.20 Other yarn, mixed mainly or solely with wool or fine animal hair
 - 5510.30 Other yarn, mixed mainly or solely with cotton
 - 5510.90 Other yarn

5511 YARN (OTHER THAN SEWING THREAD) OF MAN-MADE STAPLE FIBRES, PUT UP FOR RETAIL SALE.

- 5511.10 Of synthetic staple fibres, containing 85% or more by weight of such fibres
- 5511.20 Of synthetic staple fibres, containing less than 85% by weight of such fibres
- 5511.30 Of artificial staple fibres

9. INVOICING REQUIREMENTS

YARNS

19 CFR 141.89 specifies invoice requirements for yarns as follows:

- (1) All yarn invoices should show:
 - (a) Fiber content by weight;
 - (b) whether single or plied;
 - (c) whether or not put up for retail sale (See Section XI, Note 4, HTSUS);
 - (d) whether or not intended for use as sewing thread;
- (2) If chief weight of silk—show whether spun or filament;
- (3) If chief weight of cotton—show:
 - (a) Whether combed or uncombed
 - (b) Metric number (mn)
 - (c) Whether bleached and/or mercerized;
 - (4) If chief weight of man-made fiber—show:
 - (a) Whether filament, or spun, or a combination of filament and spun
 - (b) If a combination of filament and spun—give percentage of filament and spun by weight.
- (5) If chief weight of filament man-made fiber—show:
 - (a) Whether high tenacity (See Section XI, note 6 HTSUS).
 - (b) Whether monofilament, multifilament or strip
 - (c) Whether texturized
 - (d) Yarn number in decitex
 - (e) Number of turns per meter
 - (f) For monofilaments—show cross sectional dimension in millimeters
 - (g) For strips—show the width of the strip in millimeters (measure in folded or twisted condition if so imported).

Although 19 CFR provides no specific invoicing requirements for fiber or for twine, cordage, rope or cable, or for textile fibers, 19 CFR 141.86(3) requires:

A detailed description of the merchandise, including the name by which each item is known, the grade or quality, and the marks, numbers, and symbols under which sold by the seller or manufacturer to the trade in the country of exportation, together with the marks and numbers of the packages in which the merchandise is packed * * *

19 CFR 141.87 further requires that:

Whenever the classification or appraisement of merchandise depends on the component materials, the invoice shall set forth a breakdown giving the value, weight, or other necessary measurement of each component material in sufficient detail to determine the correct duties. Based on these general requirements, the following (non-regulatory) invoicing guidelines have been developed:

TWINE, CORDAGE, ROPE OR CABLE

- (1) State fiber content (sisal, polypropylene, nylon, etc.).
- (2) State whether braided or twisted. If twisted, provide weight per unit length in decitex and direction of twist ("S" or "Z")
- (3) If the item is twisted or braided around a core, describe the core material (e.g., rubber strands, braided cord, etc.)
- (4) Provide diameter in millimeters or centimeters.
- (5) Describe in what condition the item will be imported (i.e., length, in rolls, coils or bales).
- (6) If the item is made of strip, state the width of that strip in both its folded and unfolded condition and state whether or not that strip is fibrillated.
- (7) If the item is single, Z-twisted and of sisal or other textile fibers of the genus agave, provide the minimum twine breaking force.
- (8) If the item is single, Z-twisted, of polyethylene or polypropylene and stabilized against degradation by sunlight, provide the minimum twine breaking force and the average minimum knot breaking force.
- (9) Indicate whether there are loops, hooks or other fittings on one or both ends of the item.
- (10) If the item is dedicated for some special use (such as mountain climbing), state that use and indicate how the item is so dedicated (e.g., length etc.).

FIBERS

Similarly, the following guidelines have been developed for fibers:

- (1) All invoices for fibers should state the fiber content by percentage by weight.
- (2) All invoices for wool and animal hair should state:
 - (a) the animal source from which the fiber is obtained
 - (b) the condition (greasy, shorn, unimproved, degreased, scoured, fleece washed, carbonized, carded, combed etc.) of the fiber
 - (c) the grade (finer than 40's but not finer than 44's, etc.) of each lot of wool, specifying the standards used (U.S. official standards, etc.)
 - (d) the net weight of each lot of wool or hair in the condition in which it is shipped, and the shipper's estimate of the clean yield of each lot by weight or percentage.

- (3) All invoices for raw cotton should state:
 - (a) whether harsh or rough cotton
 - (b) the staple length
 - (c) the variety of cotton, such as Karnak, Gisha, Pima, Tanguis, etc.
- (4) All invoices for raw vegetable fibers should state:
 - (a) the type of fiber (flax, jute, hemp etc.)
 - (b) whether the fiber is raw, retted, broken, scutched or otherwise processed.
- (5) All invoices for man-made staple fibers should state:
 - (a) fiber content
 - (b) whether the fiber is carded, combed or otherwise processed for spinning.

APPENDIX A: USEFUL CONVERSION FACTORS**WEIGHT**

1 kilogram = 2.2046 pounds

1 ounce = 28.35 grams

FORCE

1 pound-force = 4.448 Newtons

1 kilogram-force = 9.807 Newtons

1 kilogram-force = 2.2046 pounds-force

DISTANCE

1 inch = 2.54 centimeters

1 yard = 0.9144 meters

1 kilometer = .6214 miles

LINEAR DENSITY

Decitex = number of grams per 10,000 meters

NM Metric cotton yarn number = 1.6933 x NE English cotton yarn number

NM = 10,000 ÷ Decitex

NM = 9,000 ÷ Denier

Decitex = 10 x Tex

Decitex = 10,000 ÷ NM

Decitex = 5,900 ÷ NE

Decitex = 1.111111 x Denier

Decitex = 14,880,000 ÷ number of feet per pound

TENACITY

1 gram/denier = 8.827 centinewtons/tex

1 millinewton/decitex = 1 centinewton/tex

APPENDIX B: BURN TEST

BACKGROUND

Textile fibers are complex chemical substances. As such, they exhibit varying behavior when they burn; for example, color of smoke and type of residue. The burning test is a simple method to identify fibers because all that is needed is a flame and a knowledge of the burning properties. Relatively little skill or training is required, and it is a quick test since it last only as long as the material burns.

The burning test is not only useful to those who have no other means of identification available, but is also useful as a confirmatory test to those doing fiber analysis by other means. For example, under the microscope, regular nylon and polyester have the same appearance. While it is usually not possible to tell them apart solely by using the microscope, it is usually possible to distinguish between these two fibers by burning them.

LIMITATIONS

The burning test does have certain limitations. The burning behavior of the fiber may be affected by the finish applied to the fiber. For example, a flame retardant finish on a cotton fabric greatly reduces the degree of flammability, while napping or brushing of the same fabric increases the rate of burning.

Also, the presence of blends often complicates the identification of fibers by burning. Two or three different kinds of fiber burning together in one yarn may be difficult to distinguish. However, with practice, many common blends, such as polyester and wool, can be identified by this method.

Some fibers burn almost identically because they have the same chemical composition. Cotton, flax, ramie, and viscose rayon are examples. Other methods must be used to differentiate these four.

METHOD

In the burning test, the following items are considered: (a) melting and/or burning characteristics; (b) appearance, shape, feel and color of the residue or remains after burning. (See Table B). The method is as follows:

1. Lay out a sheet of aluminum foil 6 to 9 inches square to act as a fire-proof surface on which to work
2. Yarns (warp yarns and filling yarns) will run perpendicular to each other in a fabric. Separate several yarns from both the horizontal and vertical directions. The yarns should be 4 to 5 inches in length.
3. Twist at least 4 to 6 yarns together to form a bundle about 1/8 inch in diameter.
4. Hold the bundle with tweezers (or between coins) such that about 3 inches are available to burn. Keep the fiber bundle as horizontal as possible.

5. Bring the fiber close to the flame but not into the flame Note if the fiber melts. Note if the fiber shrinks away from the flame Note if the burned end of the fiber forms an ash, a bead or other characteristic noted in Table B.

6. Ignite the fiber. Note if the fiber self-extinguishes (flame goes out when lighter removed). Note the color of the smoke; is it very dark or black Rate of burning is generally not useful since it depends on the size of the bundle and other such factors, but man-made fibers generally burn faster than natural fibers.

SAFETY NOTES

1. To avoid burns do not hold the fibers in the hand. Do not bring flame too close to the head or hair, especially facial hair.

2. It is better to use a butane lighter than a match.

TABLE B: BURNING CHARACTERISTICS OF TEXTILE FIBERS

Fiber	Burn or melt	Shrinks from flame?	Residue	Other Properties
acetate	burns & melts	yes	dark, hard, solid bead	acrid (hot vinegar) odor
acrylic	burns & melts	yes	hard, irregularly shaped bead	flame gives off black smoke; acrid odor
aramid	burns & melts	yes	hard, black bead	self-extinguishing
cotton	burns	no	fine, feathery gray ash	odor similar to burning paper
flax, hemp, jute, ramie	burns	no	fine, feathery gray ash	odor similar to burning paper
glass	melts at high temperature not attainable with lighter	very slowly		flame resistant fiber; heat from lighter will not cause fiber to melt
modacrylic	burns & melts	yes	hard, black, irregular bead	self-extinguishing; acrid chemical odor
novoloid	burns at high temperature not attainable with lighter	yes	retains shape but turns black	heat from lighter will not cause fiber to burn
nylon	burns & melts	yes	hard, cream colored bead; if fibers are overheated, bead will become dark	flaming usually caused by finish present; drops of melted fiber may fall from heated portion of sample; celery odor
olefin	burns & melts	yes	hard, tan bead	flame gives off black smoke; chemical odor

Fiber	Burn or melt	Shrinks from flame?	Residue	Other Properties
polyester	burns & melts	yes	hard, cream colored bead; if fibers are overheated, bead will become dark	drops of melted fiber may fall from heated portion of sample; flame gives off black smoke; chemical odor
rayon	burns	no	fine, feathery gray ash	
rubber	burns rapidly and melts	yes	tacky, soft black residue	
saran	burns & melts	yes	hard, black irregular bead	self-extinguishing; chemical odor
silk	burns	yes	black, hollow irregular bead which crushes easily to a gritty black powder	
spandex	burns & melts	no	soft, black ash	
triacetate	burns & melts	yes	dark, hard, solid bead	chemical odor
vinal	burns & melts	yes	hard, tan bead	chemical odor
vinylon	burns & melts	yes	hard, black irregular bead	acid odor
wool, mohair, cashmere, alpaca	burns	yes	black, hollow irregular bead which crushes easily to a gritty black powder	

ADDITIONAL INFORMATION

Customs Electronic Bulletin Board

The Customs Electronic Bulletin Board (CEBB) is an automated system which provides the entire trade community with current, relevant information regarding Customs operations and items of special interest. It was established as another effort to promote the Customs Service as "trade friendly" within the importing and exporting community. The CEBB posts timely information including proposed regulations, news releases, Customs publications and notices, etc. which may be "downloaded" to your own PC. The Customs Service does not charge the public to use the CEBB. You only pay telephone charges. To use the CEBB, you must have a personal computer with a modem. The CEBB supports modem speeds from 2400 to 28,800 baud. Set up your terminal as ANSI, set databits to 8, set parity to N and stopbits to 1. Dial (703) 440-6155 and log on with your name and choose a password. After a few questions, you are set to get up-to-date information from Customs. If you have any questions about the CEBB, call (703) 440-6236.

The Internet

The Customs home page on the Internet's World Wide Web—which began public operation on August 1, 1996—will also provide the entire trade community with current, relevant information regarding Customs operations and items of special interest. It was established as another effort to promote the Customs Service as “trade friendly” within the importing and exporting community. The home page will post timely information including proposed regulations, news releases, Customs publications and notices, etc. which may be printed or “downloaded” to your own PC. Not all features may be available in the beginning. The Customs Service does not charge the public for this service, although you will need Internet access to use it. The Internet address for Customs home page is <http://www.customs.ustreas.gov>.

Customs Regulations

The current edition of *Customs Regulations of the United States*, in loose-leaf format, is available by subscription from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. The bound 1996 Edition of Title 19, *Code of Federal Regulations*, which incorporates all changes to the *Customs Regulations* from April, 1995 through March, 1996 is also available for sale from the same address. All proposed and final regulations are published in the *Federal Register* which is published daily by the Office of the Federal Register, National Archives and Records Administration, and distributed by the Superintendent of Documents. Information on on-line access to the *Federal Register* may be obtained by calling (202) 512-1530 between 7 am. and 5 p.m. Eastern time. These notices are also published in the weekly *Customs Bulletin* described below.

Customs Bulletin

The *Customs Bulletin and Decisions* (“*Customs Bulletin*”) is a weekly publication which contains decisions, rulings, regulatory proposals, notices and other information of interest to the trade community. It also contains decisions issued by the U.S. Court of International Trade and Customs related decisions of the U.S. Court of Appeals for the Federal Circuit. Bound volumes are issued annually. The *Customs Bulletin* is available for sale from the Superintendent of Documents.

What Every Member of the
Trade Community Should Know About:

*Raw Cotton:
Tariff Classification
and
Import Quotas*



A Basic Level Informed Compliance Publication
of the U.S. Customs Service

May 13, 1996

PREFACE

On December 8, 1993, Title VI of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), which is also known as the Customs Modernization Act or 'Mod Act', became effective. These provisions amended many sections of the Tariff Act of 1930 and related laws. Two new concepts which emerge from the Mod Act are *"informed compliance"* and *"shared responsibility."* These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the Mod Act imposes a greater obligation on Customs to provide the public with relevant information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example under section 484 of the Tariff Act, as amended, (19 U.S.C. § 1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met. The Customs Service is then responsible for fixing the final classification and value of the merchandise. The failure of an importer of record to exercise reasonable care may lead to delay in the release of merchandise or the imposition of penalties.

My office has been given a major role in meeting Customs informed compliance responsibilities. In order to provide information to the public, Customs intends to issue a series of informed compliance publications, and possibly cd-roms and videos, on topics such as value, classification, entry procedures, determination of country of origin, marking requirements, intellectual property rights, record-keeping, drawback, penalties and liquidated damages.

The National Commodity Specialist Division of the Office of Regulations and Rulings has prepared this publication on Raw Cotton as one in a series. It is hoped that this material, together with seminars and increased access to Customs rulings, will help the trade community in improving voluntary compliance with the Customs laws.

The information provided in this publication is for general information purposes only. Recognizing that many complicated factors may be involved in customs classification issues, an importer may wish to obtain a ruling under Customs Regulations, 19 C.F.R. 177, or obtain advice from an expert (such as a licensed Customs Broker, attorney or consultant) who specializes in Customs classification. Reliance solely on the general information in this pamphlet may not be considered reasonable care. Comments and suggestions are welcomed, and should be addressed to me at the Office of Regulations and Rulings, U.S. Customs Service, 1301 Constitution Avenue, NW (Franklin Ct. Bldg), Washington, DC 20229

STUART P. SEIDEL,
Assistant Commissioner,
Office of Regulations and Rulings.

INTRODUCTION

Because of the complexity of tariff classifications for raw cotton, further complicated by the several different types of tariff rate quotas that might or might not apply in any given instance, we have developed the following two documents to help importers sort out the various quotas and classifications:

- (1) a *general overview* of the quotas, and
- (2) a *tabular questionnaire* to assist in determining which quotas and tariff classifications apply to any particular situation.

1. GENERAL OVERVIEW

THE FOLLOWING GENERAL INFORMATION IS BASED ON THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES ANNOTATED (HTSUSA) AND APPLIES TO IMPORTS ENTERED FOR THE 1996 CALENDAR/QUOTA YEAR. SEE ATTACHED QUESTIONNAIRE AND THE HTSUSA FOR DETAILS.

■ Under *NAFTA*, the quantity of cotton imported duty-free from Mexico is 10,609,000 kilograms for 1996. This quantity will increase annually until the year 2003 when limitations will cease to apply on qualifying goods. Imports above 10,609,000 kilograms in 1996 will pay a higher tariff excluding harsh/rough cotton under 3/4 inches staple length which enters duty-free in unlimited quantities.

■ Under the *Uruguay Round Agreements Act*, Section 22 absolute quotas were replaced by tariff-rate quotas (TRQs) on January 1, 1995. TRQs are a two-tier tariff system under which a specified "in-quota" quantity of an article enters at lower "in-quota" tariff rates, and "over-quota" quantities enter at substantially higher "over-quota" rates. The "in-quota" quantity excludes imports from Mexico and from countries which are not members of the World Trade Organization (WTO), or which are not specifically listed in the quota. The "in-quota" TRQ quantities for cotton are listed under Additional U.S. Notes 5(b), 6(b), 7(b) and 8(b) of HTSUSA chapter 52. The in-quota quantity will increase annually until the year 2000, after which it will remain at the level reached in that year.

■ Under the *Special Cotton Import Quota*, a special quota on UPLAND cotton is triggered when the price conditions set forth in section 103B(a)(5)(F) of the Agricultural Act of 1949, as amended, are met, and the United States Department of Agriculture (USDA) issues an announcement which specifies a quantity that may be entered under HTSUSA 9903.5201-9903.5220 during a 180-day period following the effective date of such determination and announcement. Announcements may be made on a weekly basis. Imports must be accompanied by: (1) an original certificate from a foreign government agency official of the country of origin attesting that the cotton is of a variety of *Gossypium Hirsutum* (also known as Upland Cotton); (2) an importer certification that the cotton was purchased not later than 90 days after the quota was established; and (3) be entered under the terms and condi-

tions in US Note 6(a) of Subchapter III of Chapter 99 of the HTSUSA. See last paragraph, below, on General Note 15 of the HTSUSA.

■ Under the **Special Limited Global Import Quota**, a special quota on UPLAND cotton is triggered when the price conditions set forth in section 103B(n) of the Agricultural Act of 1949, as amended, are met, and USDA issues an announcement which specifies that quantity that may be entered under HTSUSA 9903.5200 during a 90-day period following the effective date of such determination and announcement. Imports must be accompanied by: (1) an original certificate from a foreign government agency official of the country of origin attesting that the cotton is of a variety of *Gossypium Hirsutum* (also known as Upland Cotton); (2) an importer certification that the cotton was purchased not later than 90 days after the quota was established; and (3) be entered under the terms and conditions in US Note 6(b) of Subchapter III of Chapter 99 of the HTSUSA. See last paragraph, below, on General Note 15 of the HTSUSA.

■ **General Note 15 of the HTSUSA** states that whenever any agricultural product of chapters 2 through 52, inclusive, is (1) subject to a TRQ, and (2) subject to provisions of subchapter IV of Chapter 99 HTSUSA, entries of such products *shall not be counted* against the quantities specified as the in-quota quantity. General Note 15(e) specifically lists as an exclusion "cotton entered under the provisions of US Note 6 to Subchapter III of Chapter 99 and subheadings 9903.5200 through 9903.5220 inclusive." Such imports count against the special quota quantity of HTSUSA 9903.5200 through 9903.5220 which are in the USDA announcement(s). Imports are dutiable at the tariff rates under 5201.0012, 5201.0022 or 5201.0055 depending on staple length.

2. QUESTIONNAIRE: HOW TO ENTER RAW COTTON (NOT CARDED OR COMBED, NOT WASTE)

(This questionnaire is based on the HTSUSA as of 4-29-96).

QUESTIONS	IF ANSWER IS YES	IF ANSWER IS NO
1. Is the cotton harsh or rough cotton with a staple length under 3/4 inch?	Enter under 5201.0005 (Duty free)	Go to question 2
2. Is the cotton upland cotton and is a Limited Global Upland Cotton Quota in effect?	Go to question 2(a)	Go to question 3
(a) Is it claimed by importer, certified, and within the 90 day time limit detailed in chapter 99 subchapter III?	Go to question 2(b)	Go to question 3
(b) Is quota open?	Enter under 9903.5200 paired with 5201.0012 or 5201.0022 or 5201.0055 ("in-quota" duty rate)	Go to question 3

QUESTIONS	IF ANSWER IS YES	IF ANSWER IS NO
<p>3. Is the cotton upland cotton and is a Special weekly Upland Cotton Quota in effect?</p> <p>(a) Is it claimed by importer, certified, and within the 90 day & 180 day time limits detailed in chapter 99 subchapter III?</p> <p>(b) Is quota identified by the announcement number (and chosen by the importer) open?</p> <p>(c) Is another "weekly" quota under a different announcement number still open and does importer wish to enter under it?</p>	<p>Go to question 3(a)</p> <p>Go to question 3(b)</p> <p>Enter under 9903.5201-9903.5220 paired with 5201.0012 or 5201.0022 or 5201.0055 ("in-quota" duty rate).</p> <p>Re-apply for entry under another "weekly" quota that is still open and enter under 9903.5201-9903.5220 paired with 5201.0012 or 5201.0022 or 5201.0055 ("in-quota" duty rate).</p>	<p>Go to question 4</p> <p>Go to question 4</p> <p>Go to question 3(c)</p> <p>Go to question 4</p>
<p>4. Is the cotton of Mexican origin?</p> <p>(a) Is it harsh or rough and as detailed in chapter 99 subchapter VI US note 24?</p> <p>(b) Is quota listed in Chapter 99 Subchapter VI US Note 25 still open?</p>	<p>Go to question 4(a)</p> <p>Enter under 9906.5201 paired with 5201.0038 (duty free)</p> <p>Enter under 9906.5205 paired with 5201.0018 or 5201.0028 or 5201.0038 or 5201.0080 (duty free)</p>	<p>Go to question 5</p> <p>Go to question 4(b)</p> <p>Enter under 9906.5206 or 9906.5207 (depending on value) paired with 5201.0018 or 5201.0028 or 5201.0038 or 5201.0080 ("over-quota" duty rate)</p>
<p>5. Is the cotton of staple length under 1 1/8 inch, as detailed in Chapter 52 US Note 5(b)?</p> <p>(a) Is it from a country listed in this note which has a share of the quota quantity and is that country's allocation still open?</p> <p>(b) Is it from a listed country which has a share of the quota quantity and is the aggregate quota quantity excess quota (the total quota amount minus all the country allocations) still open?</p> <p>(c) Is it from a country not listed in this note and is it a WTO country and is the total quota quantity still open?</p>	<p>Go to question 5(a)</p> <p>Enter under 5201.0014 (duty free)</p> <p>Enter under 5201.0014 (duty free)</p> <p>Enter under 5201.0014 (duty free)</p>	<p>Go to question 6</p> <p>Go to question 5(c)</p> <p>Go to question 5(c)</p> <p>Enter under 9904.5201-9904.5209 depending on value, paired with 5201.0018 ("over-quota" duty rate plus additional duty)</p>

QUESTIONS	IF ANSWER IS YES	IF ANSWER IS NO
6. Is the cotton harsh or rough, as detailed in Chapter 52 US Note 6(b)? (a) Is it from a WTO country and is quota still open?	Go to question 6(a) Enter under 5201.0024 ("in-quota" duty rate)	Go to question 7 Enter under 9904.5210-9904.5216 depending on value, paired with 5201.0028 ("over-quota" duty rate plus additional duty)
7. Is the cotton of staple length 1 1/8 inch or more but less than 1 3/8 inch, as detailed in Chapter 52 US Note 7(b)? (a) Is it from a WTO country and is quota still open?	Go to question 7(a) Enter under 5201.0034 ("in-quota" duty rate)	Go to question 8 Enter under 9904.5217-9904.5223 depending on value, paired with 5201.0038 ("over-quota" duty rate plus additional duty)
8. If you have arrived at this question, the cotton is of staple length 1 3/8 inch or more, as detailed in Chapter 52 us Note 8(b). (a) Is it from a WTO country and is quota still open?	Enter under 5201.0060 ("in-quota" duty rate)	Enter under 9904.5224-9904.5234 depending on value, paired with 5201.0080 ("over-quota" duty rate plus additional duty)

Further Information

The Customs Electronic Bulletin Board (CEBB) is an automated system which provides the entire trade community with current, relevant information regarding Customs operations and items of special interest. It was established as another effort to promote the Customs Service as "trade friendly" within the importing and exporting community. The CEBB posts timely information including proposed regulations, news releases, Customs publications and notices, etc. which may be "downloaded" to your own PC. The Customs Service does not charge the public to use the CEBB. You only pay telephone charges. To use the CEBB, you must have a personal computer with a modem. The CEBB supports modem speeds from 2400 to 14,400 baud. Set up your terminal as ANSI, set databits to 8, set parity to N and stopbits to 1. Dial (703) 440-6155 and log on with your name and choose a password. After a few questions, you are set to get up-to-date information from Customs. If you have any questions about the CEBB, call (703) 440-6236.

Additional information may be obtained from Customs ports of entry. Please consult your telephone directory for a Customs office near you.

The listing will be found under U.S. Government, Treasury Department.

The information provided in this publication is basic and is for general information purposes only. Recognizing that many complicated factors may be involved in customs classification or valuation issues, an importer may wish to obtain a ruling under Customs Regulations, 19 C.F.R. Part 177, or obtain advice from an expert (such as a licensed Customs Broker, attorney or consultant) who specializes in Customs issues. Reliance solely on the general information in this pamphlet may not be considered reasonable care.

What Every Member of the
Trade Community Should Know About:

Marble



A Basic Level
Informed Compliance Publication of the
U.S. Customs Service

November, 1996

PREFACE

On December 8, 1993, Title VI of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), which is also known as the Customs Modernization Act or "Mod Act," became effective. These provisions amended many sections of the Tariff Act of 1930 and related laws. Two new concepts which emerge from the Mod Act are "*informed compliance*" and "*shared responsibility*." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the Mod Act imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act, as amended, (19 U.S.C. §§ 1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met. The Customs Service is then responsible for fixing the final classification and value of the merchandise. The failure of an importer of record to exercise reasonable care may lead to delay in the release of merchandise or the imposition of penalties.

This office has been given a major role in meeting Customs informed compliance responsibilities. In order to provide information to the public, Customs intends to issue a series of informed compliance publications, and possibly cd-roms and videos, on topics such as value, classification, entry procedures, determination of country of origin, marking requirements, intellectual property rights, recordkeeping, drawback, penalties and liquidated damages.

The National Commodities Specialists Division of the Office of Regulations and Rulings has prepared this publication on Marble, as one in a series. It is hoped that this material, together with seminars and increased access to Customs rulings, will help the trade community in improving voluntary compliance with the Customs laws.

The information provided in this publication is for general information purposes only. Recognizing that many complicated factors may be involved in customs Classification issues, an importer may wish to obtain a ruling under Customs Regulations, 19 C.F.R. Part 177, or obtain advice from an expert (such as a licensed Customs Broker, attorney or consultant) who specializes in Customs matters. Reliance solely on the general information in this pamphlet may not be considered reasonable care.

Comments and suggestions are welcomed, and should be addressed to the Assistant Commissioner at the Office of Regulations and Rulings, U.S. Customs Service, 1301 Constitution Avenue, NW (Franklin Ct. Bldg), Washington, DC 20229.

STUART P. SEIDEL,
Assistant Commissioner,
Office of Regulations and Rulings.

TABLE OF CONTENTS

INTRODUCTION	Page 194
PRINCIPLES OF STONE CLASSIFICATION	Page 194
I. Geological nature	Page 194
II. Form	Page 195
III. Articles of precious and semi-precious stone ...	Page 195
MARBLE CLASSIFICATION ISSUES	Page 195
GEOLOGICAL DISTINCTIONS IN CHAPTER 68	Page 196
(1) MARBLE (Subheading 6802.91) v. LIME-196STONE (Subheading 6802.92)	Page 196
(2) MARBLE (Subheading 6802.91) v. SERPENTINE (Subheadings 6802.99 and 7116.20)	Page 197
MARBLE SLABS (Subheading 6802.91.05) v. OTHER MARBLE (Subheading 6802.91.15)	Page 198
CHAPTER 25	Page 199
SUBHEADING 2515.11	Page 199
SUBHEADING 2515.12	Page 200
GEOLOGICAL DEFINITIONS IN CHAPTER 25	Page 200
CHAPTER 25 v. CHAPTER 68	Page 201
HEADING 6802	Page 202
Subheading 6802.21 v. Subheading 6802.91 ...	Page 202
Heading 6802 (worked natural stone) v. Heading 6810 (artificial stone)	Page 203
THE IMPORTER'S RESPONSIBILITIES	Page 204
INVOICING REQUIREMENTS	Page 205
Additional Information	Page 205

INTRODUCTION

From ancient times through the present day, marble has been one of the most important monumental and building stones recognized for quality and durability. Shakespeare employs the phrase "whole as the marble" indicating the universal acknowledgment of this rock as the quintessential building stone. Marble is also the most important stone used in sculpture.

Geologists regard marble as a metamorphic rock, i.e., a rock which has been formed when a change takes place in another rock. Metamorphic rocks are formed deep beneath the earth's surface by extreme heat or pressure; they can also be formed when rock is permeated with other substances (e.g., magma). During metamorphosis recrystallization takes place, i.e., there is a change in the particle sizes of the minerals within the original rock.

The metamorphosis of limestone (a sedimentary rock) results in the formation of marble (a metamorphic rock). The principal component of both limestone and marble is the mineral calcium carbonate. When the smaller calcium carbonate particles within limestone recrystallize to form larger calcium carbonate particles, the limestone has metamorphosed into marble.

PRINCIPLES OF STONE CLASSIFICATION

Stone is classified based on its mineralogical properties and physical form at the time of importation. Laboratory analysis to identify the geological nature of the stone and physical examination to determine the form of the merchandise are crucial to our determination of the applicable subheading in the Harmonized Tariff Schedule of the United States (HTS). The following are the basic principles of classification applicable to importations of stone.

I. Geological nature

Numerous Headquarters rulings have held that stone is classifiable based on geological definitions. Note rulings *HQ 085266*, 09-20-89; *HQ 085968*, 03-14-90; *HQ 952679*, 01-26-93; *HQ 955738*, 03-30-94; *HQ 950057*, 10-31-91; *HQ 086894*, 11-23-90; *HQ 951525*, 08-25-92. Therefore, any HTS subheading which refers to a particular stone by name will only cover products which conform to the geological definition of the stone. Often a product which may be called by the name of a specific stone in the trade (i.e., a "commercial" definition) fails to meet the geological definition for that stone; this type of item may not be classified under the HTS provision for the specific stone.

The Headquarters rulings which follow geological definitions are supported by the Explanatory Notes to the HTS which define stones in terms of their geological nature. Thus, the Explanatory Notes to heading 2515, HTS, indicate that serpentine is not classified as marble even though it is often called "marble" in the trade, since serpentine and marble are geologically different.

Furthermore, the Explanatory Notes to heading 2516, HTS, indicate that ecaussine may not be classified as granite even though it is often called "granite" in the trade, since it is a geologically distinct stone. The Explanatory Notes to heading 2516 (as well as the language of the HTS) describe basalt and granite as distinct stones. Since basalt and granite are geologically different, they are classifiable separately even though basalt is often called "granite" in the trade. The Explanatory Notes to heading 2516 list syenite, gneiss, diabase and diorite as stones which are distinct from granite. Since these stones are geologically different from granite, they may not be classified as granite even though they are often called "granite" in the trade.

The Explanatory Notes to heading 6810, HTS, list examples of the types of stones which may be agglomerated with binders. These examples include marble, limestone and serpentine. By listing these stones separately, the Explanatory Notes indicate that marble, limestone and serpentine are regarded as distinct stones (because they are geologically distinct) even though limestone and serpentine are frequently called "marble" in the trade.

II. Form

Generally Chapter 25 covers crude stone and minerals, as well as stone and minerals worked in **very simple physical ways** (e.g., crushed, ground, powdered, washed, etc.). Stone worked beyond the point allowable in Chapter 25 is classifiable in Chapter 68. Importations of worked stone classifiable in Chapter 68 are more common than importations of crude or slightly worked stone classifiable in Chapter 25.

III. Articles of precious and semi-precious stone

While monumental and building stone is classified in Chapters 25 and 68, precious or semiprecious stone is classifiable in Chapter 71.

The HTS and the Explanatory Notes indicate that articles of precious or semiprecious stone must be classified in Chapter 71. Note 1(d) to Chapter 68 and Note (1)(a) to Chapter 71 clearly indicate that Chapter 71 takes precedence over Chapter 68. Therefore, articles of precious or semiprecious stone must be classified in Chapter 71 rather than Chapter 68. The Annex to the Explanatory Notes for Chapter 71 lists items which we regard as precious or semiprecious stones.

MARBLE CLASSIFICATION ISSUES

The two crucial classification issues for marble involve the geological nature of the stone and the degree to which the stone has been worked. In the first part of this paper we will discuss the geological definition of marble; we will discuss stones which are geologically distinct from marble but often entered incorrectly as marble. Our Initial presentation on geological distinctions will be within the context of the 6802.9 subheadings, since importations of stones classifiable in the 6802.9 provisions are the most common. (Our discussion of the 6802.9 subhead-

ings will also explain the distinction between marble slabs and other marble.)

The second half of this paper will focus on the extent to which a stone has been worked. We will explain the distinction between the worked stone classifiable in Chapter 68 and the crude or slightly worked stone classifiable in Chapter 25. We will explain various distinctions between different subheadings within Chapter 25 which are based on the degree to which the stone has been worked. (During the course of our presentation on Chapter 25, we will also discuss geological distinctions within the context of that chapter.) In addition, we will discuss distinctions between different subheadings within Chapter 68 (6802.2 v. 6802.9) which are based on the manner in which the stone has been worked.

GEOLOGICAL DISTINCTIONS IN CHAPTER 68:

1) MARBLE (Subheading 6802.91) v. LIMESTONE (Subheading 6802.92):

Geologists regard limestone and marble as distinct geological entities. Admittedly, the two stones have a similar chemical composition, since the principal component in both limestone and marble is calcium carbonate. However, marble and limestone are physically very different. Marble is limestone which has been recrystallized. The process of recrystallization makes limestone and marble two distinct stones.

Numerous rulings issued by Customs Headquarters have held that geological definitions of stone must be followed under the Harmonized Tariff Schedule (HTS). Although polished limestone (or limestone capable of taking a polish) is often called "marble" in the trade, Headquarters has ruled that it is classifiable as other calcareous stone in subheading 6802.92.00, HTS, not as marble in subheading 6802.91. Since geological definitions govern the classification of stone under the HTS and these two stones are regarded as distinct geological entities, limestone may not be classified as marble.

Since polished limestone (or limestone capable of taking a polish) is often referred to in the trade as "marble," limestone is often invoiced as marble and importers frequently enter limestone incorrectly as marble in subheading 6802.91, HTS. However, Customs does not equate limestone capable of taking a polish with marble. The crucial factor in the classification of limestone is its geological nature.

Limestone (classifiable in subheading 6802.92) and marble (classifiable in subheading 6802.91) are two geologically distinct stones because of the physical difference between them. Since marble (a metamorphic rock) is formed when limestone recrystallizes in the earth over a long period of time, marble is a much more crystalline stone than limestone. On the other hand, limestone is a sedimentary rock which contains a higher percentage of fossil material. Since limestone is frequently entered incorrectly as marble, we send samples of products entered as marble to the U.S. Customs laboratory for analysis. If a product is limestone (as opposed to marble), the laboratory will find that it does not have the degree of crystallinity required of genuine marble. When

laboratory analysis reveals that a specific stone has been entered incorrectly as marble, the Import Specialist will issue a rate advance notice and advise the importer regarding the correct classification for this item.

(2) MARBLE (Subheading 6802.91) v. SERPENTINE (Subheadings 6802.99 and 7116.20)

Serpentine is sometimes referred to as "marble" in the trade. However, **serpentine and marble are geologically distinct.** As explained above, limestone and marble are regarded as different geological entities because of the great physical difference between these two stones. Serpentine is geologically distinct from marble because its chemical composition is different. While the principal component of marble is calcium carbonate the principal component of serpentine is magnesium silicate. Marble and serpentine are two totally different stones. **Therefore, serpentine may not be classified as marble in subheading 6802.91 even though it is often called "marble" in the trade.**

Building stone (slabs and tiles) of serpentine is classifiable in subheading 6802.99.00, HTS, as other monumental or building stone. (Subheading 6802.92 is not applicable because serpentine is not a calcareous stone.)

The HTS and the Explanatory Notes indicate that articles of semiprecious stone must be classified in Chapter 71. The notes to both Chapter 68 and Chapter 71 indicate that Chapter 71 takes precedence over Chapter 68. See Note 1(d) to Chapter 68 and Note 1(a) to Chapter 71. Serpentine is listed in the Annex to the Chapter 71 Explanatory Notes as a semiprecious stone; therefore, **articles of serpentine are classifiable in subheading 7116.20, HTS, as articles of semiprecious stone,** although serpentine building stone is classifiable in Chapter 68.

When all the pieces necessary to form a complete article of stone are present on a given shipment, Customs Headquarters has ruled that the merchandise will be regarded as an article despite the fact that individual components may be in the form of slabs. Note ruling *HQ 955505*, 03-22-94. Thus, when all the pieces necessary to form a fireplace surround of serpentine are present in a single shipment, the merchandise will be regarded as an article of semiprecious stone classifiable in subheading 7116.20 despite the fact that the individual components may be in the form of slabs.

Serpentine is frequently invoiced and entered incorrectly as marble in subheading 6802.91. When the Import Specialist discovers that serpentine has been entered incorrectly as marble, a rate advance notice is sent to the importer indicating that the merchandise is properly classifiable in subheading 6802.99 (applicable to building stone of serpentine) or subheading 7116.20 (applicable to articles of serpentine including unassembled articles).

Serpentine is often invoiced as "green marble." We have found that merchandise described as "green marble" almost always proves to be serpentine when analyzed by the Customs laboratory.

MARBLE SLABS (Subheading 6802.91.05) v. OTHER MARBLE (Subheading 6802.91.15):

Marble classifiable in subheading 6802.91 is subdivided into two categories: **marble slabs classifiable in subheading 6802.91.05 and other marble classifiable in subheading 6802.91.15.**

Additional U.S. Note 1 to Chapter 68 defines marble slabs in subheading 6802.91.05 in the following manner. "For purposes of heading 6802, the term slabs embraces flat stone pieces, not over 5.1 cm in thickness, having a facial area of 25.8 cm² or more, the edges of which have not been beveled, rounded or otherwise processed except such processing as may be needed to facilitate installation as tiling or veneering in building construction."

The distinction between subheading 6802.91.05 and subheading 6802.91.15 involves a distinction between slabs and products worked beyond the point of being slabs. An ordinary marble tile might be classified either as a slab in subheading 6802.91.05 or as other marble in subheading 6802.91.15 depending on the degree to which the tile has been worked. Assuming a marble tile meets the criteria of thickness and facial area outlined in Additional U.S. Note 1, we must then determine whether or not the edge working on this tile precludes classification as a slab.

According to U.S. Note 1 to Chapter 68, a marble tile may be classified as a slab in subheading 6802.91.05, if the edges of this tile have only been beveled or otherwise processed to the extent "needed to facilitate installation as tiling." What is the degree of edge working permitted in a product classifiable in subheading 6802.91.05? What is the extent of the beveling or other processing necessary to facilitate installation as tiling?

Customs Headquarters has ruled on this issue and set a standard of three thirty seconds of an inch to distinguish between slabs and products worked beyond the point of being slabs. Note ruling HQ 951047, 09-17-92. Thus, a marble tile (which meets the criteria for thickness and area indicated in U.S. Note 1 to Chapter 68) may be classified as a marble slab in subheading 6802.91.05 if it is beveled or otherwise edge worked only three thirty seconds of an inch or less. If the bevel or other cut on the edges, sides or corners of the tile is greater (i.e., wider or deeper) than three thirty seconds of an inch, subheading 6802.91.05 would not be applicable and the item would be classified in subheading 6802.91.15.

If a marble item otherwise meets the criteria for a slab in subheading 6802.91.05, the fact that its face is polished will not preclude it from being classified in this subheading. However, if the edges or sides are polished, subheading 6802.91.15 will apply.

When all the pieces necessary to form a complete marble article (e.g., an unassembled marble fireplace surround) are present on a given shipment, the merchandise is classifiable as an article of marble in subheading 6802.91.15 despite the fact that the individual components may be slabs. This merchandise may not be entered in subheading 6802.91.05.

CHAPTER 25

The issues discussed above have been treated within the context of Chapter 68 of the HTS. **Generally Chapter 25 covers crude stone and minerals, as well as stone and minerals worked in very simple physical ways** (e.g., crushed, ground, powdered, washed, etc.). See Note 1 to Chapter 25 and the Explanatory Notes to Chapter 25. Stone worked beyond the point allowable in Chapter 25 is classifiable in Chapter 68. Importations of stone classifiable in Chapter 68 are more common than importations of Chapter 25 stone.

The balance of this paper will discuss Chapter 25 of the HTS and the distinctions in classification which are based on the degree to which a stone has been worked. We will explain the distinction between Chapter 25 and Chapter 68, distinctions between various provisions within Chapter 25 as well as distinctions between various provisions within Chapter 68.

SUBHEADING 2515.11

Crude or roughly trimmed marble is classifiable in subheading 2515.11.00, HTS. Marble which has been "merely cut by sawing or otherwise into blocks or slabs of a rectangular shape" is classifiable in subheading 2515.12.10.

The Explanatory Notes to heading 2515 define the "crude and roughly trimmed" stone covered by subheading 2515.11 in the following manner. Crude stone includes "blocks or slabs which have been merely split along the natural cleavage planes of the stone."

The surfaces of these blocks or slabs "are often uneven or undulating and frequently bear the marks of the tools used to separate them (crowbars, wedges, picks, etc.)."

Crude stone in subheading 2515.11 also includes "unshaped stone (quarystone, rubble) obtained by breaking out rocks from the quarry face (using picks, explosives, etc.)." These products have "uneven, broken surfaces and irregular edges" and "often bear the marks of quarrying (blast holes, wedge marks, etc.)."

Subheading 2515.11 also covers "waste of irregular shape arising from the actual extraction of the stone" within the quarry or from "subsequent working." (This includes "quarry stones, waste from sawing, etc.") Subheading 2515.11 is applicable assuming these pieces of stone are large enough to be used for cutting or construction. On the other hand, marble granules, chippings and powder would be classifiable in heading 2517.

"Roughly trimmed" stone covered by subheading 2515.11 is "stone which has been very crudely worked after quarrying to form blocks or slabs, still having some rough, uneven surfaces. This working involves

removing superfluous protuberances by means of hammer or chisel-type tools."

SUBHEADING 2515.12

Subheading 2515.12.10 covers marble "merely cut, by sawing or otherwise, into blocks or slabs of a rectangular (including square) shape." The Explanatory Notes indicate that the blocks and slabs covered by subheading 2515.12 "must bear discernible traces of the sawing (by wire strand or other saws) on their surfaces. If care was taken with the sawing, these traces may be very slight. In such cases, it is useful to apply a sheet of thin paper to the stone and rub it gently and evenly with a pencil held as flat as possible. This often reveals saw marks even on carefully sawn or very granular surfaces."

The Explanatory Notes indicate that subheading 2515.12 may also cover rectangular blocks and slabs of stone "obtained otherwise than by sawing, e.g., by working with a hammer or chisel." However, one must remember that **the type of sawing, cutting or working permitted for products classifiable in subheading 2515.12 is limited to the simple cutting or sawing associated with quarry stone (i.e., simple cutting from the quarry block).** Any cutting which goes beyond simple cutting from the quarry block requires classification in Chapter 68.

GEOLOGICAL DEFINITIONS IN CHAPTER 25:

Subheading 2515.11 (marble—crude and roughly trimmed) and Subheading 2515.12.10 (marble—blocks/slabs) v. Subheading 2515.20 (limestone) and Subheading 2516.90 (serpentine)

Crude or roughly trimmed limestone or serpentine may not be classified as crude or roughly trimmed marble in subheading 2515.11.00, since these stones are geologically distinct from marble. **Crude or roughly trimmed limestone is classifiable as other calcareous monumental or building stone in subheading**

2515.20.00. Crude or roughly trimmed serpentine is classifiable as other monumental or building stone in subheading 2516.90.00. Serpentine may not be classified in heading 2515 because it is not a calcareous stone.

Limestone which is merely cut by sawing or otherwise into blocks or slabs of a rectangular shape is classifiable in subheading 2515.20.00. Since limestone is geologically distinct from marble, subheading 2515.12.10 is not applicable.

Serpentine which is merely cut by sawing or otherwise into rectangular blocks or slabs is classifiable in subheading 2516.90.00. It may not be classified as marble in subheading 2515.12.10 because it is geologically distinct from marble. It may not be classified as other calcareous stone in subheading 2515.20.00 because it is not calcareous.

(Heading 2515 covers calcareous monumental or building stone of an apparent specific gravity of 2.5 or more. Calcareous monumental or building stones of an apparent specific gravity of less than 2.5 are classi-

fied in heading 2516. See Explanatory Notes to heading 2515. In the discussion above, we dealt with limestone within the context of heading 2515. Limestone generally has a specific gravity of 2.5 or more and is classifiable in subheading 2515.20.00. Occasionally limestone may have a specific gravity of less than 2.5. In these instances, it would be classifiable in subheading 2516.90.00.)

CHAPTER 25 v. CHAPTER 68

Generally, the permissible methods of working stone and minerals within Chapter 25 are listed in Note 1 to Chapter 25. According to this note, Chapter 25 only covers crude products or items which have been washed, crushed, ground, powdered, levigated, sifted, screened, concentrated by flotation, magnetic separation or other mechanical or physical processes (except crystallization). Note 1 indicates that Chapter 25 does not cover items which have been roasted, calcined, obtained by mixing or subjected to processing beyond that mentioned in each heading.

Please note that there are exceptions to the general rules indicated in Note 1 to Chapter 25. In some instances, the context of a particular Chapter 25 heading indicates that merchandise may be worked beyond the scope permitted in Note 1. (The heading may refer to merchandise which by its very nature must have been subjected to a particular process not provided for in Note 1, or the heading may refer directly to specific processes or conditions which go beyond the scope of Note 1.) Secondly, a limited number of specific items listed in Note 4 to Chapter 25 may be classified in heading 2530 although worked beyond the scope permitted in Note 1. These exceptions are not relevant to our discussion of monumental and building stone in this paper.

Regarding the classification of monumental and building stone, any cutting which goes beyond simple cutting from the quarry block requires classification in Chapter 68. Thus, **precision cutting, edge working or any processing other than the simplest cutting associated with the quarry precludes classification in Chapter 25.**

The following operations dictate classification in Chapter 68:

1. **Honing and other operations designed to create a smooth or flat surface**
2. **The same operations applied to the edges of a stone**
3. **Polishing applied to either the face or edges of the stone**
4. **Bossing, dressing, grinding, chamfering, molding, carving, etc.**
5. **All working which goes beyond the simplest cutting associated with the quarry shifts the classification of stone from Chapter 25 to Chapter 68.**

Stone is classifiable in Chapter 25 when it is merely shaped "by splitting, rough cutting or squaring, or squaring by sawing." However, any

stone worked beyond this point is classifiable in Chapter 68. See Explanatory Notes to Chapter 68.

The Explanatory Notes to heading 2515 indicate that this heading only covers stone "in the mass or roughly trimmed or merely cut, by sawing or otherwise, into blocks or slabs of a rectangular (including square) shape * * * Blocks, etc., which have been further worked, i.e., bossed, dressed with the pick, bushing hammer or chisel, etc., sand-dressed, ground, polished, chamfered, etc., are classified in heading 68.02. The same classification applies to blanks of articles."

HEADING 6802

Heading 6802 provides for worked monumental and building stone and articles thereof. The Explanatory Notes to heading 6802 indicate that natural monumental or building stone "worked beyond the stage of the normal quarry products of Chapter 25" is classifiable in heading 6802. "The heading therefore covers stone which has been further processed than mere shaping into blocks, sheets or slabs by splitting, roughly cutting or squaring, or squaring by sawing (square or rectangular faces)."

The Explanatory Notes indicate that heading 6802 covers stone "in the forms produced by the stone-mason, sculptor, etc." These forms include "roughly sawn blanks" and "non-rectangular sheets (one or more faces triangular, hexagonal, trapezoidal, circular, etc.)." In addition, these forms include "stone of any shape (including blocks, slabs or sheets), whether or not in the form of finished articles, which has been bossed (*i.e.*, stone which has been given a rock faced finish by smoothing along the edges while leaving rough protuberant faces), dressed with the pick, bushing hammer, or chisel, etc., furrowed with the drag-comb, etc., planed, sand dressed, ground, polished, chamfered, moulded, turned, ornamented, carved, etc."

(In addition to worked monumental and building stone, heading 6802 covers articles of monumental and building stone. As indicated above in the section on serpentine, a significant exception to this rule involves articles of precious or semiprecious stone classifiable in Chapter 71.)

Subheading 6802.21 v. Subheading 6802.91

Within heading 6802, there is a distinction between subheadings which begin with the numbers 6802.2 and subheadings which begin with the numbers 6802.9. The 6802.2 subheadings cover "monumental or building stone, and articles thereof, simply cut or sawn, with a flat or even surface." Monumental or building stone worked beyond this point is covered by the 6802.9 subheadings.

Subheading 6802.21.50 provides for marble "simply cut or sawn, with a flat or even surface." Subheading 2515.12.10 covers marble "merely cut, by sawing or otherwise, into blocks of a rectangular (including square) shape." What is the distinction

between the cutting or sawing referred to in Chapter 25 and the cutting or sawing referred to in Chapter 68? As explained above, the cutting or sawing referred to in Chapter 25 is the type of simple cutting associated with quarry stone.

Stone classifiable in heading 2515 may be obtained by blasting from a large quarry block or by cutting from the block. This stone may have surfaces which are obviously irregular. Even when obtained by cutting from the quarry block, heading 2515 stone will not have perfectly smooth surfaces. **Merchandise classifiable in subheading 2515.12 "must bear discernible traces of the sawing"** (although these traces may be slight in some instances). **On the other hand, marble classifiable in subheading 6802.21.50 will have "a flat or even surface" (i.e., a surface which has been smoothed).** Subheading 6802.21.50 applies to marble cut or sawn in a manner which goes beyond the cutting from the quarry block associated with Chapter 25 merchandise.

While subheading 6802.21 covers marble simply cut or sawn, with a flat or even surface, subheading 6802.91 covers marble worked beyond this point. Thus, marble which has been polished, beveled, edge worked, carved, molded, ornamented or worked in numerous other ways is classifiable in subheading 6802.91. All operations which go beyond cutting or sawing dictate classification in subheading 6802.91, rather than subheading 6802.21.

Limestone "simply cut or sawn, with a flat or even surface" is classifiable in subheading 6802.22 as other calcareous stone. It may not be classified as marble in subheading 6802.21 because it is geologically different from marble. **Limestone worked beyond the point of simple cutting or sawing is classifiable as other calcareous stone in subheading 6802.92.**

Serpentine "simply cut or sawn, with a flat or even surface" is classifiable as other stone in subheading 6802.29. It may not be classified as marble in subheading 6802.21 because it is geologically different from marble. It may not be classified as other calcareous stone in subheading 6802.22 because it is not calcareous. **Serpentine building stone worked beyond the point of simple cutting or sawing is classifiable as other stone in subheading 6802.99, while serpentine articles are classifiable as articles of semiprecious stone in subheading 7116.20.**

Heading 6802 (worked natural stone) v. Heading 6810 (artificial stone)

Worked building stone is classifiable in heading 6802 assuming the stone is natural. However, **artificial stone is classifiable in heading 6810.** Artificial stone is formed when pieces of natural stone or crushed or powdered natural stone (e.g., limestone, marble, etc.) is agglomerated with plastics, cement, lime or other binders. In artificial (agglomerated) stone, the binding material and the stone run through the body of the item.

The classification of floor and wall tiles of agglomerated stone is dependent on the precise type of binding material used in the products. **Subheading 6810.19.12 provides for floor and wall tiles of stone agglomerated with binders other than cement (e.g., plastics). Floor and wall tiles of stone agglomerated with cement are classifiable in subheading 6810.19.14.**

THE IMPORTER'S RESPONSIBILITIES

Since the enactment of the Customs Modernization Act in December 1993, the legal burden of correctly classifying merchandise has shifted from the Customs Service to the importer. The importer of record is responsible for determining a particular stone's geological nature prior to the importation and entry of the merchandise. When an importer or broker is aware (e.g., by receipt of a rate advance notice) that a particular stone is geological limestone or geological serpentine rather than marble, he or she **must** enter the merchandise under the appropriate provision for limestone or serpentine despite the fact that the foreign supplier may refer to the product as "marble." **Moreover, the importer shall advise the supplier that the merchandise is actually limestone or serpentine and encourage the shipper to invoice the item correctly as limestone or serpentine, not marble.**

In addition to the importer's responsibility regarding the geological nature of the stone which is being imported, **he or she must be aware of the exact manner in which the stone has been worked Prior to the importation and entry of the merchandise, the importer must determine the precise manner in which the stone has been worked. The importer must obtain this information from the foreign supplier and advise the supplier to include the information on the invoice.**

Furthermore, the importer must be familiar with distinctions between merchandise classifiable in heading 6802 and merchandise classifiable in Chapter 25. An importer must determine whether the stone has been cut or sawn in a manner which takes it beyond the scope of Chapter 25. One must also be aware of the distinctions (based on the degree to which the stone has been worked) between different subheadings within heading 6802 and different subheadings within Chapter 25.

If the importer is not certain regarding the geological nature of a stone product or regarding other matters which are pertinent to the classification of the merchandise, he or she may request a binding ruling on the item before it is imported. A ruling request on stone should include information on the exact manner in which the stone has been worked as well as a sample of the item. If the product is too large to submit, the importer should submit a portion of the stone which includes sections of the face as well as the side (or edge) and corner. Based on our laboratory analysis of the sample as well as our

analysis of the manner in which the stone has been worked, we will advise the importer regarding the correct classification for the item.

If the importer wishes to determine the classification of a large number of stone products prior to importation, he or she may request a preclassification ruling covering the line of products. Samples of all the items should be submitted since our lab analysis is crucial to the classification of the merchandise. In addition a request for a preclassification ruling should include detailed information on the manner in which each stone was worked.

INVOICING REQUIREMENTS

The accuracy of the information contained on invoices is an essential element of many new Customs programs. These programs (including, but not limited to automated entry processing and preimportation review) may provide their benefits to the trade community as a whole only if the data gathered is correct and complete. This concern for invoice accuracy is not new; however, as we progress in automation, accuracy becomes indispensable.

Pursuant to section 141.86 of the Customs Regulations (19 CFR 141.86(a)(3)), the specific answers to the following questions are essential and should appear on invoices for marble or other stones:

6. What is the geological nature of the stone? (e.g., Is it limestone, serpentine or marble in accordance with geological definitions?) Invoicing stone simply as "marble" is improper unless the item is geological marble.
7. What is the brand name and/or style number of the stone?
8. Is the product an article, crude or roughly trimmed stone, crushed or ground stone, an unworked slab, a worked slab, etc.? [Indicate the exact form of the imported stone.]
9. Has the stone been simply cut from the quarry block or has it been further worked? Has it been precision cut, honed, edge worked, beveled, bossed, dressed with a tool, furrowed, sand dressed, planed, ground, polished, chamfered, molded, turned, ornamented, carved, etc.? [Indicate the precise extent to which the stone has been cut or worked. All operations applied to either the face or the edges of the stone should be described exactly.]
10. What is the area and thickness of the product?

ADDITIONAL INFORMATION

Customs Electronic Bulletin Board

The Customs Electronic Bulletin Board (CEBB) is an automated system which provides the entire trade community with current, relevant information regarding Customs operations and items of special interest. It was established as another effort to promote the Customs Service as "trade friendly" within the importing and exporting community. The CEBB posts timely information including proposed regulations, news releases, Customs publications and notices, etc. which may be "downloaded" to your own PC. The Customs Service does not charge the pub-

lic to use the CEBB. You only pay telephone charges. To use the CEBB, you must have a personal computer with a modem. The CEBB supports modem speeds from 2400 to 28,800 baud. Set up your terminal as ANSI, set databits to 8, set parity to N and stopbits to 1. Dial (703) 440-6155 and log on with your name and choose a password. After a few questions, you are set to get up-to-date information from Customs. If you have any questions about the CEBB, call (703) 440-6236.

The Internet

The Customs home page on the Internet's World Wide Web—which began public operation on August 1, 1996—will also provide the entire trade community with current, relevant information regarding Customs operations and items of special interest. It was established as another effort to promote the Customs Service as "trade friendly" within the importing and exporting community. The home page will post timely information including proposed regulations, news releases, Customs publications and notices, etc., which may be printed or "downloaded" to your own PC. Not all features may be available in the beginning. The Customs Service does not charge the public for this service, although you will need Internet access to use it. The Internet address for Customs home page is <http://www.customs.ustras.gov>.

Customs Regulations

The current edition of *Customs Regulations of the United States* in loose-leaf format, is available by subscription from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. The bound 1996 Edition of Title 19, *Code of Federal Regulations*, which incorporates all changes to the *Customs Regulations* from April, 1995 through March, 1996 is also available for sale from the same address. All proposed and final regulations are published in the *Federal Register* which is published daily by the Office of the Federal Register, National Archives and Records Administration, and distributed by the Superintendent of Documents. Information on on-line access to the *Federal Register* may be obtained by calling (202) 512-1530 between 7 a.m. and 5 p.m. Eastern time. These notices are also published in the weekly *Customs Bulletin* described below.

Customs Bulletin

The *Customs Bulletin and Decisions* ("Customs Bulletin") is a weekly publication which contains decisions, rulings, regulatory proposals, notices and other information of interest to the trade community. It also contains decisions issued by the U.S. Court of International Trade and Customs related decisions of the U. S. Court of Appeals for the Federal Circuit. Bound volumes are issued annually. The Customs Bulletin is available for sale from the Superintendent of Documents.

Video Tapes

The U. S. Customs Service has prepared a two hour video tape in VHS format to assist Customs officers and members of the public in under-

standing the new **Rules of Origin for Textiles and Apparel Products** which became effective on July 1, 1996. Copies of this tape are available from many trade organizations, customs brokers, consultants and law firms. The tape may also be purchased for \$20.00 (U.S. funds) directly from the Customs Service. If you require further information, or would like to purchase one or more tapes, please forward your written request to: U.S. Customs Service, Office of Regulations and Rulings, 1301 Constitution Avenue, NW, Franklin Court, Washington, DC 20229, Attn: Operational Oversight Division. Orders must be accompanied by a check or money order drawn on a U.S. financial institution and made payable to U.S. Customs Service.

Informed Compliance Publications

The U.S. Customs Service has also prepared other Informed Compliance publications in the *What Every Member of the Trade Community Should Know About*: series which, are available from the Customs Electronic Bulletin Board and the Customs Home Page (see above). As of the date of this publication, the following booklets were available:

- Fibers & Yarns
- Buying & Selling Commissions
- NAFTA for Textiles & Textile Articles
- Raw Cotton
- Customs Valuation
- Textile & Apparel Rules of Origin
- Mushrooms
- Marble.

Check the Customs Electronic Bulletin Board and the Customs Home Page for more recent publications.

Other Value Publications

Customs Valuation under the Trade Agreements Act of 1979 is a 96-page book containing a detailed narrative description of the customs valuation system, the customs valuation title of the Trade Agreements Act (§ 402 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (19 U.S.C. § 1401a)), the Statement of Administrative Action which was sent to the U.S. Congress in conjunction with the TAA, regulations (19 C.F.R. §§ 152.000-152.108) implementing the valuation system (a few sections of the regulations have been amended subsequent to the publication of the book) and questions and answers concerning the valuation system. A copy may be obtained from the U.S. Customs Service, Office of Regulations and Rulings, Value Branch, 1301 Constitution Avenue, N.W., Franklin Court Building, Washington, D.C. 20229.

Customs Valuation Encyclopedia (with updates) is comprised of relevant statutory provisions, Customs Regulations implementing the statute, portions of the Customs Valuation Code, judicial precedent, and administrative rulings involving application of valuation law. A copy may be purchased for a nominal charge from the Superintendent of

Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7054.

Additional information may be obtained from Customs ports of entry. Please consult your telephone directory for a Customs office near you. The listing will be found under U.S. Government, Treasury Department.

The information provided in this publication is for general information purposes only. Recognizing that many complicated factors may be involved in customs classification issues, an importer may wish to obtain a ruling under Customs Regulations, 19 C.F.R. Part 177, or obtain advice from an expert (such as a licensed Customs Broker, attorney or consultant) who specializes in Customs matters. Reliance solely on the general information in this pamphlet may not be considered reasonable care.

**What Every Member of the
Trade Community Should Know About:**

Mushrooms



**A Basic Level
Informed Compliance Publication of the
U.S. Customs Service**

October, 1996

PREFACE

On December 8, 1993, Title VI of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), which is also known as the Customs Modernization Act or "Mod Act," became effective. These provisions amended many sections of the Tariff Act of 1930 and related laws. Two new concepts which emerge from the Mod Act are "*informed compliance*" and "*shared responsibility*." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the Mod Act imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act, as amended, (19 U.S.C. § 1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met. The Customs Service is then responsible for fixing the final classification and value of the merchandise. The failure of an importer of record to exercise reasonable care may lead to delay in the release of merchandise or the imposition of penalties.

This office has been given a major role in meeting Customs informed compliance responsibilities. In order to provide information to the public, Customs intends to issue a series of informed compliance publications, and possibly cassettes and videos, on topics such as value, classification, entry procedures, determination of country of origin, marking requirements, intellectual property rights, recordkeeping, drawback, penalties and liquidated damages.

The National Commodity Specialists Division of the Office of Regulations and Rulings has prepared this publication on Mushroom, as one in a series. It is hoped that this material, together with seminars and increased access to Customs rulings, will help the trade community in improving voluntary compliance with the Customs laws.

The information provided in this publication is for general information purposes only. Recognizing that many complicated factors may be involved in customs classification issues, an importer may wish to obtain a ruling under Customs Regulations, 19 C.F.R. Part 177, or obtain advice from an expert (such as a licensed Customs Broker, attorney or consultant) who specializes in Customs matters. Reliance solely on the general information in this pamphlet may not be considered reasonable care.

Comments and suggestions are welcomed, and should be addressed to the Assistant Commissioner at the Office of Regulations and Rulings, U.S. Customs Service, 1301 Constitution Avenue, NW (Franklin Ct. Bldg), Washington, DC 20229.

STUART P. SEIDEL,
Assistant Commissioner,
Office of Regulations and Rulings.

TABLE OF CONTENTS

I. Background	212
II. Types	212
III. Imports	213
IV. Classification	213
V. Marking	214
XIII. Bibliography	214
Appendix A	216
Appendix B(a)	217
Appendix B(b)	218
Appendix C	219

I. Background

In March of 1993, the Agricultural Marketing Service (AMS) of the USDA entered into an agreement whereby the U.S. Customs service is required to collect a mushroom fee of \$0.0045/pound or \$0.009921 per kilogram for fresh mushrooms entered or withdrawn from warehouse on or after February 1, 1996. The Mushroom Promotion, Research and Consumer Information Act of 1990 (7 U.S.C. 6101-6112), provides the authority for the Mushroom Council to periodically increase the rate of assessment to fund the program.

II. Types

There are more than 38,000 kinds of mushrooms in the world and vary considerably in color, size and shape. The main parts of a mushroom include the stem and cap. (See appendix A) Stem sizes vary from short and thick to long and thin. The cap's texture can be smooth, pitted, honeycombed or ruffled. Flavors range from bland to rich, to nutty and earthy¹. The cultivated *Agaricus* (common button) mushroom, having a mild, earthy flavor, with cap ranges in size from ½ to 3 inches in diameter and either a white or tan color, is commonly found in most grocery and supermarket stores. Mushrooms are available fresh, in bulk, and in various retail sizes. Canned mushrooms are available in several forms including whole, chopped, sliced and caps only. Some mushrooms, usually the imported varieties, are available dried either whole or in slices, bits or pieces.²

Specialty or exotic varieties of mushrooms are commercially grown in the United States as well as imported. A specialty grower is one having at least 200 natural wood logs in production or a commercial indoor growing area³. Specialty mushrooms include Shiitake (*Lentinus edodes*), Maitake (*Grifola frondosa*), Nameko (*Pholiota nameko*), Enoki (*Flammulina velutipes*), Pom Pom (*Hericius erinaceus*), Oyster (*Pleurotus spp.*), Portabella, Crimini (*Agaricus Bisporus*), and others. Production has steadily increased over the past several years. Shiitake, Portabella, and Oyster are the most popular, followed by the Enoki, Maitake, Nameko and Pom Pom⁴.

The volume of sales for commercially grown specialty mushrooms decreased five percent since 1994 to 7.99 million pounds. The value of the sales has decreased two percent from 1994 to \$28.3 million. Shiitake mushroom sales reached 5.25 million pounds. Oyster mushroom sales totaled 1.71 million pounds. All other specialty mushroom sales totaled 1.04 million pounds. Specialty mushrooms have proven to be a very price sensitive crop. The average price received for Shiitake and Oyster mushrooms by growers increased on average of 13 cents per pound. In

¹ Coyle, L.P., Jr., *World Encyclopedia of Food*, Facts on File, New York, N.Y., 1982, pp. 414-415.

² *Ibid.*

³ United States Department of Agriculture, National Agricultural Statistics Service, Washington D.C., *Mushrooms*, August 1996.

⁴ Molin, J., "Specialty Mushrooms: Yesterday, Today, & Tomorrow", *Mushroom News*, February 1995, p.10.

general, prices for the 1994-1995 growing season ranged from \$0.13 to \$3.54 per pound⁵.

III. Imports

Mushrooms are imported from as many as thirty five countries. The majority of imports come from China, Hong Kong, Italy, Japan and Taiwan. Mushrooms that have been prepared or preserved otherwise than by vinegar or acetic acid, in containers each holding more than 225 grams, other than whole (including buttons) and sliced, comprise the largest segment with 34,136,483 kilograms imported. The dutiable value totaled \$62,780,115 with a calculated duty due of \$8,272,965. Import penetration is slowing but still remains high. According to U.S. Customs figures, total mushroom imports for 1995 reached 78,749,806 kilograms. The dutiable value was calculated at \$186,853,924 with \$21,832,768 collected as revenue⁶. (See Appendix B(a)). From 1994 to 1995 there has been an import increase of 10,155,258 kilograms, a total dutiable value increase of \$25,209,286, and an increase of \$2,011,353 in the amount of calculated duty⁷. (See figure 1 and also Appendix B(b)).

Figure 1

	Imports (kgs)	Vessel Value(\$)	Air Value (\$)
1994	68,594,548	147,542,938	2,039,874
1995	78,749,806	180,761,906	2,365,925

	Total Value	Dutiable Value (\$)	Calculated Duty (\$)
1994	149,582,812	161,644,638	19,821,415
1995	183,111,226	186,853,924	21,832,768

For a breakdown of source countries by Harmonized Tariff Schedule number see Appendix C.

IV. Classification

The Harmonized Tariff Schedule of the United States (1996) provides for **fresh or chilled mushrooms** under subheading 0709.51.0000 HTS. **Frozen mushrooms**, uncooked or cooked by steaming or boiling in water, are provided for under 0710.80.2000 HTS. Mushrooms that have been **provisionally preserved**, for example, by sulfur dioxide gas, in brine, in sulfur water or in other preservative solutions, but unsuitable in that state for immediate consumption are provided under 0711.90.4000 HTS. Mushrooms that have been **dried**, whole, cut,

⁵ USDA

⁶ "U.S. Imports of merchandise International Harmonized System Commodity Classification", U.S. Department of Commerce, Bureau of the Census, Data Services Division, Washington D.C., February 1995.

⁷ *Ibid.*

sliced, broken or in powder, **but not further prepared**, are classified under 0712.30.1000 HTS, if they have been **air or sun dried**. Mushrooms that have been **dried by other means**, (e.g. freeze-dried) are provided for under 0712.30.20000 HTS. Mushrooms that have been **prepared or preserved by vinegar or acetic acid** are classified under 2001.90.3900 HTS. **Straw mushrooms** that have been **prepared or preserved otherwise than vinegar or acetic acid** are provided under 2003.10.0009 HTS. All other mushrooms that have been **prepared or preserved otherwise than vinegar or acetic acid** are provided for according to container size and form under 2003.10.0027, 2003.10.0031, 2003.10.0037, 2003.10.0043, 2003.10.0047, and 2003.10.0053 HTS⁸. The fresh mushrooms classified under 0709.51.0000 are subject to the above mentioned mushroom fee.

V. Marking

Section 1970(b) of the Omnibus Trade and Competitiveness Act of 1988, Pub. L. No.100-418, provides:

Imported preserved mushrooms shall not be considered to be in compliance with section 304 of the Tariff Act of 1930 (19 U.S.C. § 1304) or any other law relating to the marking of imported articles unless the containers thereof indicate in English the country in which the mushrooms were grown.⁹

Subsequent packing or preserving (i.e. canning) is not sufficient to change the country of origin. The term "product of * * *" may only be used to refer to the country in which the mushrooms were grown. (See HRL 734281 Feb.13, 1992) Acceptable country of origin marking includes "grown in * * *" and "product of * * *". However, the "product of * * *" phrase cannot be used when referring to the country in which the mushrooms have been merely packed or canned.

XIII. Bibliography

Charles, V.K., "Some Common Mushrooms And How To Know Them", United States Department of Agriculture, No.143, Washington DC, March 1931.

Coyle, L.P. Jr., ed. *World Encyclopedia of Food*, Facts on File, New York, N.Y., 1982, pp. 414-415.

Customs Bulletin and Decisions, Washington DC, Vol.26, No.21, May 20, 1992.

Dickinson, C. and John Lucas, ed. *VNR Color Dictionary of Mushrooms*, Van Nostrand Reingold Company, Orbis Publishing Limited, London, 1982.

Dickinson, C. and John Lucas, *The Encyclopedia of Mushrooms*, G.P. Putnam's Sons New York, Orbis Publishing Limited, London, 1979.

Fanelli, A. and Tosco, U., *Color Treasury of Mushrooms & Toadstools*, Crescent books, Orbis Publishing Limited, Londo 1972.

⁸ Harmonized Tariff Schedule of the United States, (1996), Washington DC United States International Trade Commission, 1996.

⁹ "Customs Bulletin and Decisions", Vol.26, No.21, Washington DC, May 20, 1992.

Gonzales, A., "Many awaiting the next Portabella", *The Packer*, January 1, 1996, p.6C.

Gonzales, A., "Groups relying on others to spread word", *The Packer*, January 1, 1996, p.10C.

United States International Trade Commission, *Harmonized Tariff Schedule of the United States* (1996), Washington DC, 1996.

Luh, B.S., Woodruff, J.G., *Commercial Vegetable Processing*, The AVI Publishing Company, Westport, Connecticut, 1975, p.241.

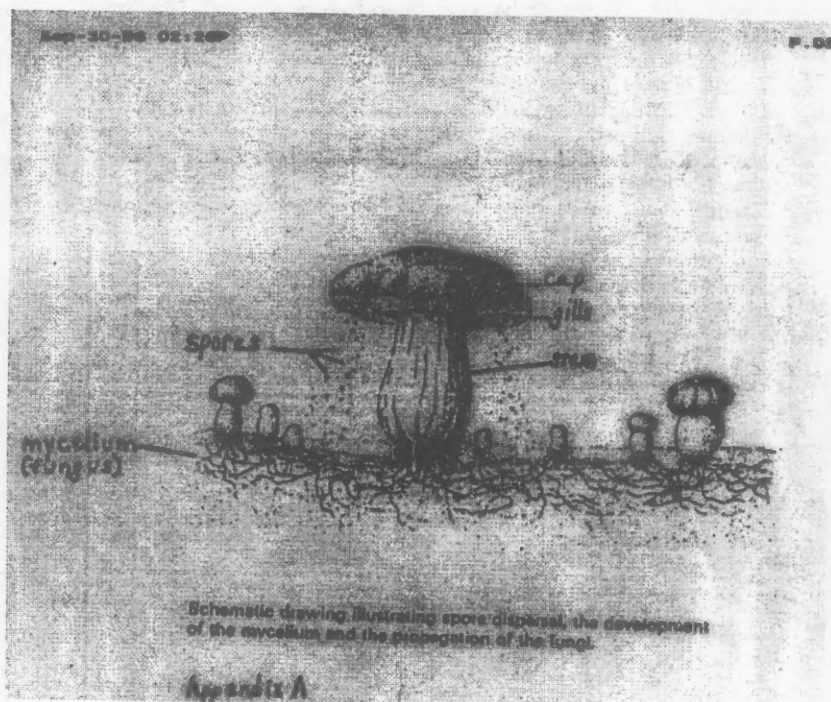
Molin, J., "Specialty Mushrooms: Yesterday, Today, & Tomorrow", *Mushroom News*, February 1995, p.10.

Mushroom Council, "The Complete Story", Mushroom Council, Roseville, California, 1995.

U.S. Imports of Merchandise, International Harmonized System Commodity Classification, U.S. Department of Commerce, Bureau of the Census, Data services division, Washington D.C., February, 1995.

United States Department of Agriculture, National Agricultural Statistics Service, Washington D.C., *Mushrooms*, August 1995.

Appendix A



Appendix B (a)

U.S. Imports of Mushrooms For 1995								
Description	HTS#	General Imports /Kgs	Vessel/ Value \$	Air/ Value \$	HTS#	Total value	Dutiable Value \$	Calculated Duty
fresh/chilled	0709.61.0000	2,473,242	\$27,857	\$831,793	7096100000	\$859,650	\$5,556,314	\$656,231
cooked/uncooked/ frozen	0710.80.2000	736,719	\$1,963,296	\$81,521	7108020000	\$2,044,817	\$1,897,743	\$234,237
provisionally preserved	0711.90.4000	278,873	\$542,457	\$0	7119040000	\$542,457	\$533,639	\$68,929
air or sun-dried	0712.30.1000	1,513,844	\$13,334,635	\$986,646	7123010000	\$14,321,281	\$13,742,417	\$531,620
dried nesoi	0712.30.2000	628,429	\$6,226,021	\$449,360	7123020000	\$6,675,381	\$6,769,933	\$273,354
veges, prep/pres by vinegar/acetic acid, other *	2001.90.3900	N/A	N/A	N/A	2001903900	N/A	N/A	N/A
straw mush prep/pres ex by vinegar/ acetic acid	2003.10.0009	5,830,914	\$11,381,262	\$0	2003100009	\$11,381,262	\$11,394,862	\$1,519,868
whole/button/prep/pres/nesoi ctrs not over 225g	2003.10.0027	1,875,396	\$5,691,432	\$0	2003100027	\$5,691,432	45,711,916	\$678,221
sliced prep/pres nesoi ctrs not ov 225g	2003.10.0031	6,115,405	\$18,476,128	\$0	2003100031	\$18,476,128	\$18,007,061	\$2,178,946
nesoi prep/pres nesoi ctrs not ov 225g	2003.10.0037	20,894,622	\$45,970,786	\$0	2003100037	\$45,970,786	\$50,437,031	\$6,147,691
whole/button prep/ pres nesoi ctrs ov 225g	2003.10.0043	1,215,093	\$3,213,005	\$0	2003100043	\$3,213,005	\$3,206,362	\$396,588
sliced prep/pres nesoi ctrs over 225g	2003.10.0047	3,050,766	\$6,938,846	\$0	2003100047	\$6,938,846	\$6,816,531	\$874,118
nesoi prep/pres nesoi ctrs over 225g	2003.10.0053	34,136,483	\$66,996,181	\$16,605	2003100053	\$66,996,181	\$62,780,115	\$8,272,965
Totals 1995 *includes vegetables other than mushrooms		78,749,806	\$180,761,906	\$2,365,826		\$183,111,226	\$186,853,924	\$21,832,768

Appendix B(b)

U.S. Imports of Mushrooms For 1994								
Description	HTS#	General Imports/ Kgs	Vessel/ Value \$	Air/ Value \$	HTS#	Total Value	Dutiable Value \$	Calculated Duty
fresh/chilled	0710.96.1000	1,677,623	\$2,096	\$989,235	7095100000	\$991,331	\$3,585,880	\$493,662
cooked/uncooked/frozen	0710.80.2000	718,578	\$1,658,424	\$121,505	7108020000	\$1,779,929	\$1,828,428	\$235,789
provisionally preserved	0711.90.4000	74,112	\$126,750	\$1,374	7119040000	\$128,124	\$157,904	\$22,229
air or sun-dried	0712.30.1000	1,073,772	\$9,063,435	\$1,061,146	7123010000	\$10,124,581	\$9,031,997	\$386,260
dried nesoi	0712.30.2000	684,390	\$7,641,111	\$435,152	7123020000	\$8,076,263	\$8,261,156	\$348,260
veges, prep/pres by vinegar/acetic acid, other *	2001.90.3900	N/A	N/A	N/A	2001903900	N/A	N/A	N/A
straw mush prep/pres ex by vinegar/acetic acid	2003.10.0009	4,998,116	\$10,195,831	\$0	2003100009	\$10,195,831	\$10,132,714	\$1,363,854
whole/button/prep/pres/nesoi ctrs not over 225g	2003.10.0027	1,551,107	\$4,461,966	\$0	2003100027	\$4,461,966	\$4,335,744	\$538,396
sliced prep/pres nesoi ctrs not ov 225g	2003.10.0031	4,520,027	\$12,754,290	\$5,328	2003100031	\$12,759,618	\$12,342,456	\$1,545,635
nesoi prep/pres nesoi ctrs not ov 225g	2003.10.0037	16,962,646	\$33,483,091	\$3,414	2003100037	\$33,486,505	\$41,296,687	\$5,269,300
whole/button prep/pres nesoi ctrs ov 225g	2003.10.0043	1,023,608	\$2,472,302	\$7,741	2003100043	\$2,480,043	\$2,445,513	\$316,315
sliced prep/pres nesoi ctrs over 225g	2003.10.0047	3,928,114	\$7,385,723	\$2,800	2003100047	\$7,388,523	\$8,183,870	\$1,079,752
nesoi prep/pres nesoi ctrs over 225g	2003.10.0053	31,384,455	\$58,297,919	\$12,179	2003100053	\$58,310,098	\$60,092,298	\$8,221,983
Totals 1994								
*Includes vegetables other than mushrooms		68,594,548	\$147,542,838	\$2,039,874		\$149,582,812	\$161,644,638	\$19,821,415

Appendix C

Breakdown of Source Countries by Harmonized Tariff Schedule Number																																	
S - Five or Less Importers M - More than Five Importers																																	
	AU	BE	BR	CA	CH	CL	CN	CO	DE	EC	ES	FI	FR	HK	HT	ID	IE	IN	IT	JP	KR	KX	MY	NL	PE	PL	PK	SE	SI	SG	TH		
0709.51.0000		S		M	S		M						S	S	S		S	S	M	M	S	S		S	S			S					
0710.80.2000	S			S			M		S		S		S						M	M								S					
0711.90.4000				S			M				S		S	S				S	S	S		S									S		
0712.30.1000			S	M	M		M		M	S			M	M	S			S	M	M	M		S	S			S		S		S		
0712.30.2000				S	S		M		M				M	M					M	M	M					S					S		
2003.10.0009							S						S	S		M		S				S										S	
2003.10.0027				S			M				S		M	M		M		S	M				S	M							M		
2003.10.0031							M	S					S	S		M		S	S	S	S	S	S	M							S		
2003.10.0037					S	S	M	M			S	S	S			M			M	M												M	
2003.10.0043							M													M													
2003.10.0047							M							M																			
2003.10.0053							S	M			M			M	M	M	S	M	S	S				S									

ADDITIONAL INFORMATION

Customs Electronic Bulletin Board

The Customs Electronic Bulletin Board (CEBB) is an automated system which provides the entire trade community with current, relevant information regarding Customs operations and items of special interest. It was established as another effort to promote the Customs Service as "trade friendly" within the importing and exporting community. The CBBB posts timely information including proposed regulations, news releases, Customs publications and notices, etc which may be "downloaded" to your own PC. The Customs Service does not charge the public to use the CEBB. You only pay telephone charges. To use the CEBB, you must have a personal computer with a modem. The CEBB supports modem speeds from 2400 to 28,800 baud. Set up your terminal as ANSI, set databits to 8, set parity to N and stopbits to 1. Dial (703) 440-6155 and log on with your name and choose a password. After a few questions, you are set to get up-to-date information from Customs. If you have any questions about the CEBB, call (703) 440-6236.

The Internet

The Customs home page on the Internet's World Wide Web—which began public operation on August 1, 1996—will also provide the entire trade community with current, relevant information regarding Customs operations and items of special interest. It was established as another effort to promote the Customs Service as "trade friendly" within the importing and exporting community. The home page will post timely information including proposed regulations, news releases, Customs publications and notices, etc., which may be printed or "downloaded" to your own PC. Not all features may be available in the beginning. The Customs Service does not charge the public for this service, although you will need Internet access to use it. The Internet address for Customs home page is <http://www.customs.ustreas.gov>.

Customs Regulations

The current edition of *Customs Regulations of the United States*, in loose-leaf format, is available by subscription from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. The bound 1996 Edition of Title 19, *Code of Federal Regulations*, which incorporates all changes to the *Customs Regulations* from April, 1995 through March, 1996 is also available for sale from the same address. All proposed and final regulations are published in the *Federal Register* which is published daily by the Office of the Federal Register, National Archives and Records Administration, and distributed by the Superintendent of Documents. Information on on-line access to the *Federal Register* may be obtained by calling (202) 512-1530 between 7 a.m. and 5 p.m. Eastern time. These notices are also published in the weekly *Customs Bulletin* described below.

Customs Bulletin

The *Customs Bulletin and Decisions* ("Customs Bulletin") is a weekly publication which contains decisions, rulings, regulatory proposals, notices and other information of interest to the trade community. It also contains decisions issued by the U.S. Court of International Trade and Customs related decisions of the U.S. Court of Appeals for the Federal Circuit. Bound volumes are issued annually. The Customs Bulletin is available for sale from the Superintendent of Documents.

Video Tapes

The U. S. Customs Service has prepared a two hour video tape in VHS format to assist Customs officers and members of the public in understanding the new *Rules of Origin for Textiles and Apparel Products* which became effective on July 1, 1996. Copies of this tape are available from many trade organizations, customs brokers, consultants and law firms. The tape may also be purchased for \$20.00 (U.S. funds) directly from the Customs Service. If you require further information, or would like to purchase one or more tapes, please forward your written request to: U.S. Customs Service, Office of Regulations and Rulings, 1301 Constitution Avenue, NW, Franklin Court, Washington, DC 20229, Attn: Operational Oversight Division. Orders must be accompanied by a check or money order drawn on a U.S. financial institution and made payable to U.S. Customs Service.

Informed Compliance Publications

The U.S. Customs Service has also prepared other Informed Compliance publications in the *What Every Member of the Trade Community Should Know About*: series which, are available from the Customs Electronic Bulletin Board and the Customs Home Page (see above). As of the date of this publication, the following booklets were available: **NAFTA: for Textiles and Textile Articles** (May, 1996), **Raw Cotton: Tariff Classification and Import Quotas** (May, 1996), **Fibers & Yarns—Construction and Classification under the Harmonized Tariff System** (September, 1996), **Customs Value** (June, 1996). Check the Customs Electronic Bulletin Board and the Customs Home Page for more recent publications.

Other Value Publications

Customs Valuation under the Trade Agreements Act of 1979 is a 96-page book containing a detailed narrative description of the customs valuation system, the customs valuation title of the Trade Agreements Act (§ 402 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (19 U.S.C. § 1401a)), the Statement of Administrative Action which was sent to the U.S. Congress in conjunction with the TAA, regulations (19 C.F.R. §§ 152.000–152.108) implementing the valuation system (a few sections of the regulations have been amended subsequent to the publication of the book) and questions and answers concerning the valuation system. A copy may be obtained from the U.S. Customs Service, Office of Regulations and Rulings, Value Branch,

1301 Constitution Avenue, N.W., Franklin Court Building, Washington, D.C. 20229.

Customs Valuation Encyclopedia (with updates) is comprised of relevant statutory provisions, Customs Regulations implementing the statute, portions of the Customs Valuation Code, judicial precedent, and administrative rulings involving application of valuation law. A copy may be purchased for a nominal charge from the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7054.

Additional information may be obtained from Customs ports of entry. Please consult your telephone directory for a Customs office near you. The listing will be found under U.S. Government, Treasury Department.

The information provided in this publication is for general information purposes only. Recognizing that many complicated factors may be involved in customs classification issues, an importer may wish to obtain a ruling under Customs regulations, 19 C.F.R. Part 177, or obtain advice from an expert (such as a licensed Customs Broker, attorney or consultant) who specializes in Customs matters. Reliance solely on the general information in this pamphlet may not be considered reasonable care.

What Every Member of the
Trade Community Should Know About:

Peanuts

and their classification under the
Harmonized Tariff Schedules



An Advanced Level
Compliance Publication of the
U.S. Customs Service

November, 1996

PREFACE

On December 8, 1993, Title VI of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), which is also known as the Customs Modernization Act or "Mod Act," became effective. These provisions amended many sections of the Tariff Act of 1930 and related laws. Two new concepts which emerge from the Mod Act are *"informed compliance"* and *"shared responsibility."* These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the Mod Act imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act, as amended, (19 U.S.C. § 1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met. The Customs Service is then responsible for fixing the final classification and value of the merchandise. The failure of an importer of record to exercise reasonable care may lead to delay in the release of merchandise or the imposition of penalties.

This office has been given a major role in meeting Customs informed compliance responsibilities. In order to provide information to the public, Customs intends to issue a series of informed compliance publications, and possibly cd-roms and videos, on topics such as value, classification, entry procedures, determination of country of origin, marking requirements, intellectual property rights, recordkeeping, drawback, penalties and liquidated damages.

The National Commodities Specialists Division of the Office of Regulations and Rulings has prepared this publication on Peanuts, as one in a series. It is hoped that this material, together with seminars and increased access to Customs rulings, will help the trade community in improving voluntary compliance with the Customs laws.

The information provided in this publication is for general information purposes only. Recognizing that many complicated factors may be involved in customs Classification issues, an importer may wish to obtain a ruling under Customs Regulations, 19 C.F.R. Part 177, or obtain advice from an expert (such as a licensed Customs Broker, attorney or consultant) who specializes in Customs matters. Reliance solely on the general information in this pamphlet may not be considered reasonable care.

Comments and suggestions are welcomed, and should be addressed to the Assistant Commissioner at the Office of Regulations and Rulings, U.S. Customs Service, 1301 Constitution Avenue, NW (Franklin Ct. Bldg), Washington, DC 20229.

STUART P. SEIDEL,
Assistant Commissioner,
Office of Regulations and Rulings.

TABLE OF CONTENTS

What Peanuts Are	226
How Peanuts Are Grown	226
Culture	226
Types of Peanuts	226
A) Spanish Types	227
B) Runner Types	227
C) Virginia Types	227
D) Valencia Types	228
E) Tennessee Red and Tennessee White Types	228
Uses	228
U.S. Department of Agriculture Program for Peanuts	228
Trade	229
Classification of Peanuts, Not Roasted or Otherwise Cooked, Whether or Not Shelled or Broken	229
Classification of Prepared or Preserved Peanuts	230
Quota	231
Import Requirements	232
Invoicing Requirements	232
Bibliography	233
Additional Information	234

What Peanuts Are

Peanuts are also own as groundnuts, earthnuts, goobers, pindas, pinders, and Manila nuts. Peanuts are called groundnuts in many countries because they grow under the ground. They are the fruit or pods of *Arachis hypogaea* of the *Leguminosae* family. The peanut plant (*Arachis hypogaea*) is a hairy, taprooted annual legume that measures 1 to 1.5 feet in height. The plant is an annual legume which grows close to the ground and bears pods below the surface. The papery pods range from $\frac{1}{4}$ inch to 2 inches in length containing two or three kernels.

How Peanuts Are Grown

The flower of the *Arachis hypogaea* is borne above ground and after it withers, the stalk elongates, bends down, and forces the ovary underground. When the seed is mature, the inner lining of the pods (called the seed coat) changes from white to brown. The entire plant, including most of the roots, is removed from the soil during harvesting.

Despite their name, peanuts are not true hard shelled nuts, but rather, mature legume seeds in underground pods, analogous to bean or pea pods.

The pods begin in the orange veined, yellow petaled, pealike flowers, which are borne in axillary clusters above ground. Following self pollination (peanuts are complete inbreeders), the flowers fade. The stalks at the bases of the ovaries, called pegs, elongate rapidly, and turn downward to bury the fruits several inches in the ground to complete their development.

The pods act in nutrient absorption. The fruits have wrinkled shells that are constricted between the two to three seeds. The mature seeds resemble other legume seeds, such as beans, but they have papery thin seed coats, as opposed to the usual, hard legume seed coats.

Culture

Peanuts grow best in light, sandy loam soil. They require five months of warm weather, and an annual rainfall of 20 to 40 inches or the equivalent in irrigation water.

The pods ripen 120 to 150 days after the seeds are planted. If the crop is harvested too early, the pods will be unripe. If they are harvested late, the pods will snap off at the stalk, and will remain in the soil.

Types of Peanuts

Four types of peanuts are the most popular: Spanish, Runner, Virginia, and Valencia. There are also Tennessee Red and Tennessee White types, as well. Certain types are preferred for particular uses because of differences in flavor, oil content, size, and shape. For many uses the different types are interchangeable. Most peanuts marketed in the shell are of the Virginia type, along with some Valencia selected for large size and attractive appearance of the shell. Spanish peanuts are used mostly for peanut candy, salted nuts, and peanut butter. Most Runners are used to make peanut butter.

The various types are distinguished by branching habit and branch length. There are numerous varieties of each type of peanut.

Each year new varieties of peanuts are introduced somewhere in the peanut belt of the U.S. or in other countries. Introducing a new variety may mean change in the planting rate, adjusting the planter, harvester, dryer, cleaner, sheller, and method of marketing.

There are two main types of growth forms: bunch and runner. Bunch types grow upright, while runner types grow near the ground.

A) Spanish Types

The small Spanish types are grown in South Africa, and in the southwestern and southeastern U.S. Prior to 1940, 90 percent of the peanuts grown in Georgia were Spanish types, but the trend since then has been larger seeded, higher yielding, more disease resistant varieties.

Varieties of the Spanish type include Dixie Spanish, Improved Spanish 2B, GFA Spanish, Argentine, Spantex, Spanette, Shaffers Spanish, Natal Common (Spanish), White Kernel Varieties, Starr, Comet, Florispan, Spanhoma, Spancross, and Wilco I.

B) Runner Types

Since 1940, there has been a shift to production of Runner type peanuts in the southeastern U.S. This is due to higher yields and wider use in peanut butter and salting, as compared to Spanish types.

Varieties of Runners include Southeastern Runner 56-15, Dixie Runner, Early Runner, Virginia Bunch 67, Bradford Runner, Egyptian Giant (also known as Virginia Bunch and Giant), Rhodesian Spanish Bunch (Valencia and Virginia Bunch), North Carolina Runner 56-1 5, Florunner, and Shulamit.

C) Virginia Types

The large seeded Virginia types are grown in Virginia, North Carolina, Tennessee, and parts of Georgia. They are increasing in popularity due to demand for large peanuts for processing, particularly for salting, confections, and roasting in the shells.

Virginia type peanuts are either bunch or running in growth habit. The bunch type is upright to spreading. It attains a height of 18 to 22 inches, and a spread of 28 to 30 inches, with 33 to 36 inch rows that seldom cover the ground. The pods are borne within a few inches of the base of the plant.

Varieties of Virginia type peanuts include Virginia Bunch Large, Virginia Bunch 46-2, Virginia Bunch Small, Virginia Bunch 67, Virginia Bunch G2, Virginia Runner G26, NC 4X, NC 2, NC 5, Georgia Hybrid 119-20, Holland Jumbo, Holland Station Runner, Adkins Runner, Virginia Runner 26, Virginia Runner G (Holland Virginia Runner), Virginia 56 R, Virginia 61 R, Florigiant, Georgia Hybrid 119-18, Virginia B22-15, Virginia A17-12, Virginia A23-7, and Florida 416.

D) Valencia Types

Valencia types are coarse, and they have heavy reddish stems and large foliage. They are comparatively tall, having a height of 50 inches and a spread of 30 inches. Peanut pods are borne on pegs arising from the main stem and the side branches. Most of the pods are clustered around the base of the plant, and only a few are found several inches away. Valencia types are three seeded and smooth, with no constriction between the seeds. Seeds are oval and tightly crowded into the pods. There are two strains, one with flesh and the other with red seeds. The seed count is 65 to each ounce.

E) Tennessee Red and Tennessee White Types

These are alike, except for the color of the seed. The plants are similar to Valencia types, except that the stems are green to greenish brown, and the pods are rough, irregular, and have a smaller proportion of kernels.

Uses

Peanuts for edible uses account for two thirds of the total peanut consumption in the United States. The principal uses are peanut butter, peanut candy, salted, shelled nuts, and nuts that have been roasted in the shell. Salted peanuts are usually roasted in oil and packed in retail size, transparent plastic bags and hermetically sealed cans. Dry roasted, salted peanuts are also marketed in significant quantities. The primary use of peanut butter is in the home, but large quantities are also used in the commercial manufacture of sandwiches, candy, and bakery products.

Low grade or culled peanuts not suitable for the edible market are utilized in the production of peanut oil, seed and feed.

Peanuts have a variety of industrial end uses, particularly the oil. Paint, varnish, lubricating oil, leather dressings, furniture polish, insecticides, and nitroglycerin are made from peanut oil. Soap is made from saponified oil, and many cosmetics contain peanut oil and its derivatives. The protein portion of the oil is utilized in the manufacture of some textile fibers.

Peanut shells are put to use in the manufacture of plastic, wallboard, abrasives, and fuel. They are also used to make cellulose (used in rayon and paper) and mucilage (glue).

Peanut plant tops are used to make hay. The protein cake (oilcake meal) residue from oil processing is utilized as an animal feed and as a soil fertilizer.

U.S. Department of Agriculture Program for Peanuts

Peanuts have been designated by Congress to be one of America's basic crops. In order to protect domestic industry, the USDA conducts a Program for Peanuts. Two USDA programs for domestic peanuts are the Price Support Program and the Production Adjustment Program National Poundage Quota). The Price Support Program consists of a

two tier price support system that is tied to a maximum poundage quota. Domestic peanuts produced subject to the poundage quota are supported at the higher of two prices, while peanuts over quota or those produced on farms not having a quota are supported at the lower rate. The quota support price acts as a floor price for domestic edible peanuts. For producers who fail to fill their quota in any given year, there is a maximum 10 percent over marketing allowance for the subsequent year. Pursuant to the program, producers may place peanuts under nonrecourse loan with the Commodity Credit Corporation (CCC) at the designated support price or they may privately contract for the sale of their crop.

Trade

The major producers/exporters of peanuts are the United States, Argentina, Sudan, Senegal and Brazil. These five countries account for 71 percent of total world exports. In recent years, the United States has been the leading exporter of peanuts. The major peanut importers are the European Economic Community (EEC), Canada and Japan. These three areas account for 78 percent of the world's imports.

Although India and China are the world's largest producers of peanuts, they account for a small part of international trade because most of their production is used for domestic consumption as peanut oil. Exports of peanuts from India and China are equivalent to less than four percent of world trade.

Ninety percent of India's production is processed into peanut oil. Only a nominal amount of hand picked select grade peanuts are exported. India prohibits the importation of all oil seeds, including peanuts.

The European Economic Community (EEC) is the largest consuming region in the world that does not produce peanuts. All of its consumption is supplied by imports. Consumption of peanuts in the EEC is primarily as food, mostly as roasted in shell peanuts and as shelled peanuts used in confectionery and bakery products.

The average annual imports of peanuts are less than 0.5 percent of U.S. consumption. Two thirds of U.S. imports are roasted, unshelled peanuts. The major suppliers are Singapore, Taiwan, Malaysia, Hong Kong, China, and Canada. The principal suppliers of shelled peanut imports are Argentina and Canada. Most of Canada's peanut butter is processed from Chinese peanuts. Imports of peanut butter from Argentina are in the form of a paste and must be further processed in the U.S. Other minor suppliers of peanut butter include Malawi, China, India, and Singapore.

Classification of Peanuts, Not Roasted or Otherwise Cooked, Whether or Not Shelled or Broken

The Harmonized Tariff Schedule of the United States (HTS) progresses from the least processed product to the most processed item. For example, the first provision for peanuts is heading 1202, which provides

for raw peanuts. Peanuts which fall into this provision have not been roasted or otherwise cooked. The Explanatory Notes allow for the following to be embraced within the scope of the raw peanut provision:

Headings 12.01 to 12.07 cover seeds and fruits of a kind used for the extraction (by pressure or by solvents) of edible or industrial oils and fats, whether they are presented for that purpose, for sowing or for other purposes. These headings do not, however, include products of heading 08.01 or 08.02, olives (Chapter 7 or 20) or certain seeds and fruits from which oil may be extracted but which are primarily used for other purposes, e.g., apricot, peach or plum kernels (heading 12.12) and cocoa beans (heading 18.01).

The seeds and fruits covered by the headings may be whole, broken, crushed, husked or shelled. They may also have undergone moderate heat treatment designed mainly to ensure better preservation (e.g., by inactivating the lipolytic enzymes and eliminating part of the moisture, for the purpose of de-bittering or to facilitate their use). However, such treatment is permitted only if it does not alter the character of the seeds and fruits as natural products and does not make them suitable for a specific use rather than for general use.

The headings exclude solid residues resulting from the extraction for vegetable oil from oil seeds or oleaginous fruits (including defatted flours and meals) (heading 23.04, 23.05 or 23.06).

Heading 1202 covers peanuts, whether or not shelled or broken, which are not roasted or otherwise cooked. Peanuts in heading 1202 may be heat treated to ensure better preservation, as noted above in the General Explanatory Note. Roasted or otherwise cooked peanuts fall in Chapter 20.

The Harmonized Tariff Schedule of the United States (HTS) provides for peanuts which have not been roasted or otherwise cooked under subheadings 1202.10 and 1202.20. If the peanuts are in the shell, the applicable subheading is 1202.10, HTS, which provides for peanuts (groundnuts), not roasted or otherwise cooked, whether or not shelled or broken, in shell.

Peanuts, not roasted or otherwise cooked, shelled, whether or not broken, are classifiable under subheading 1202.20, HTS, which provides for peanuts (groundnuts), not roasted or otherwise cooked, whether or not shelled or broken, shelled, whether or not broken.

Classification of Prepared or Preserved Peanuts

Peanuts which have been roasted or otherwise cooked, prepared or preserved, are provided for under subheading 2008.11. The Explanatory Notes state:

This heading covers fruit, nuts and other edible parts of plants, whether whole, in pieces or crushed, including mixtures thereof prepared or preserved otherwise than by any of the processes specified in other Chapters or in the preceding headings of this Chapter.

It includes, inter alia:

- 1) Almonds, groundnuts, areca (or betel) nuts and other nuts, dry roasted, oil roasted or fat roasted, whether or not containing or coated with vegetable oil, salt, flavours, spices or other additives.
- 2) "Peanut butter," consisting of a paste made by grinding roasted groundnuts, whether or not containing added salt or oil * * *
- (9) Fruit, nuts and other edible parts of plants, preserved by sugar and put up in syrup (e.g., marrons glaces or ginger, in syrup), whatever the packing.

All the above products may be sweetened with synthetic sweetening agents (e.g., sorbitol) instead of sugar.

The products of this heading are generally put up in cans, jars or airtight containers, or in casks, barrels or similar containers.

The HTS provides for prepared or preserved peanuts under 2008.11, HTS, which provides for fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included, nuts, peanuts (groundnuts) and other seeds, whether or not mixed together, peanuts (groundnuts). The provisions are as follows: peanut butter and paste 2008.11.0200—2008.11.1500, blanched peanuts— 2008.11.2200—2008.11.3500, and "other"— 2008.11.4200—2008.11.6000.

Quota

The 1995 GATT introduces major changes in the importation regulations for peanuts. For example, under the 1995 GATT, peanuts are no longer subject to an absolute quota, as they have been in the past, but rather, to a tariff rate quota. It also establishes a tariff rate quota for peanut butter. Additional U.S. Note 2 (b), Chapter 12 of the 1995 HTS outlines the restrictions of the new tariff rate quotas. It states that the aggregate quantity of peanuts entered under subheadings 1202.10.40, 1202.20.40, 2008.11.25, and 2008.11.45 during the twelve month period from April 1 in any year through the following March 31, inclusive shall not exceed 26,341 metric tons from Argentina, and 4,052 metric tons from other countries or areas. Under the 1995 GATT, peanut butter is subject to a tariff rate quota. The aforementioned rules continue into 1996.

Imports from Mexico are not permitted or included under this quota, and Mexican articles are not classifiable therein. Peanuts from Mexico are subject to the restrictions in subheadings 9906.12.01—9906.12.06 and 9906.20.03—9906.20.05 and in Quota Book Telegram 94-551, entitled, "NAFTA/Mexico Tariff Rate Quota on Peanuts (U.S. Note 16)" (HQ Telex 5357103, dated December 23, 1994). The telex states that the 1995 tariff rate quota limit for peanuts from Mexico is 3,478,000 kilograms.

Import Requirements

Animal and Plant Health Inspection Service (APHIS)/Plant Protection and Quarantine (PPQ) review is required for all peanut entries prior to release. Agricultural Marketing Service (AMS) notification is also required.

The following operational procedures apply to imported peanuts, both foreign grown peanuts subject to quota, and U.S. grown peanuts returned to the U.S. under 9801.00.1035, HTS:

- 1) APHIS/PPQ notification for imports of foreign grown peanuts.
- 2) Mandatory APHIS/PPQ inspection and clearance of all foreign grown raw peanuts prior to Customs release.
- 3) AMS notification of all foreign grown peanuts at the time of entry summary review.
- 4) It is the importer's responsibility to request inspection and certification services from AMS by contacting:

Fresh Products Branch
F&VD, AMS, USDA
Room 2056-S, P.O. Box 96456
Washington, DC 20090-6456

- 5) A bond for three times the total entered value is required for foreign grown peanuts which are blanched or otherwise prepared or preserved. The bond is required in order to ensure compliance with FDA requirements for quality, size and wholesomeness.
- 6) Liquidation for all foreign grown peanuts will be withheld pending compliance with appropriate APHIS/PPQ, AMS and FDA entry requirements.
- 7) All importations of U.S. grown peanuts are to be reported to the Tobacco and Peanuts Division Agricultural Stabilization and Conservation Service, USDA.
- 8) Domestic peanuts are not subject to quota limitations upon importation. However, these products may be subject to the USDA marketing quota penalties pursuant to 7CFR 1446.115, if they are "contract additional" or "loan additional" peanuts. Importers of domestic peanuts should be referred to the Agricultural Stabilization and Conservation System, USDA, for further assistance.

Invoicing Requirements

The accuracy of the information contained on invoices is an essential element of the structure of the many new and creative programs Customs has undertaken recently. These programs, including, but not limited to, automated entry processing and pre-importation review, may only provide their benefits to the trade community as a whole if the data gathered are correct and complete. This concern for invoice accuracy is not new, but, as we progress in automation, accuracy becomes indispensable.

Section 141.86 of the Customs Regulations concerns invoicing requirements. Subparagraph (a) (3) of the section requires invoices to have the following:

"A detailed description of the merchandise, including the name by which each item is known, the grade or quality, and the marks, numbers and symbols under which sold by the seller or manufacturer to the trade in the country of exportation, together with the marks and numbers of the packages in which the merchandise is packed."

A "detailed description" is one which enables an import specialist to properly classify imported merchandise. Accordingly, the invoice description must indicate any information which has a direct bearing on the proper classification of the imported item and it is incumbent upon the importer of record to ensure that the detailed description is present on each invoice.

Importers do not have to provide information that is not necessary to classify a specific item. However, they are responsible for giving the Customs Service the information that is needed.

The following information is required on invoices:

- 1) type of peanut—whether roasted, dry roasted, in shell, out of shell
- 2) percentage of peanuts in the product i.e.: 50 percent peanuts 50 percent rice crackers
- 3) use of the product
- 4) processes performed on the product

Bibliography

Information from the following publications was used in the preparation of this **Informed Compliance Publication**.

Cayne, Bernard S. and Holland, David T., ed. *The Encyclopedia Americana*. Danbury: Grolier, Inc., 1989.

Coyle, L. Patrick, ed. *The World Encyclopedia of Food*. New York: Facts on File, Inc., 1982.

Estimated Tariff Equivalents of US Quotas on Agricultural Imports and Analysis of Competitive Conditions in US. and Foreign Markets for Sugar, Meat, Peanuts, Cotton, and Dairy Products; Report to the President on Investigation No. 332-281 Under Section 332 (g) of the Tariff Act of 1930, as Amended; USITC Publication 2276; April 1990. Washington DC: United States International Trade Commission, 1990.

Explanatory Notes to the Harmonized Commodity Description and Coding System. Brussels: Customs Cooperation Council, 1990.

Goetz, Philip W., ed. *The New Encyclopedia Britannica*. Chicago: Encyclopedia Britannica, Inc., 1986.

Harmonized Tariff Schedule of the United States, 1995. Washington DC: United States International Trade Commission, 1995.

Peanuts; Report to the President on Investigation No. 22-42 Under Section 22 of the Agricultural Adjustment Act, as Amended; USITC Publication 1124; January 1981. Washington DC: United States International Trade Commission, 1981.

Peanuts; Report to the President on Investigation No. 22-52 Under Section 22 of the Agricultural Adjustment Act, as Amended; USITC Publication 2369; March 1991. Washington DC: United States International Trade Commission, 1991.

Summary of Trade and Tariff information; Prepared in Terms of the Tariff Schedules of the United States; Peanuts and Coconuts for Edible Purposes; TSUS Items 145.04-145.09, 145.20, and 145.48; USITC Publication 841; Control No. 1-9-18; February 1982. Washington DC: United States International Trade Commission, 1982.

Woodruff Jasper Guy. *Peanuts: Production, Processing, Products.* Westport: The Avi Publishing Company, Inc., 1973.

ADDITIONAL INFORMATION

Customs Electronic Bulletin Board

The Customs Electronic Bulletin Board (CEBB) is an automated system which provides the entire trade community with current, relevant information regarding Customs operations and items of special interest. It was established as another effort to promote the Customs Service as "trade friendly" within the importing and exporting community. The CEBB posts timely information including proposed regulations, news releases, Customs publications and notices, etc. which may be "downloaded" to your own PC. The Customs Service does not charge the public to use the CEBB. You only pay telephone charges. To use the CEBB, you must have a personal computer with a modem. The CEBB supports modem speeds from 2400 to 28,800 baud. Set up your terminal as ANSI, set databits to 8, set parity to N and stopbits to 1. Dial (703) 440-6155 and log on with your name and choose a password. After a few questions, you are set to get up-to-date information from Customs. If you have any questions about the CEBB, call (703) 440-6236.

The Internet

The Customs home page on the Internet's World Wide Web—which began public operation on August 1, 1996—will also provide the entire trade community with current, relevant information regarding Customs operations and items of special interest. It was established as another effort to promote the Customs Service as "trade friendly" within the importing and exporting community. The home page will post timely information including proposed regulations, news releases, Customs publications and notices, etc., which may be printed or "downloaded" to your own PC. Not all features may be available in the beginning. The Customs Service does not charge the public for this service, although you will need Internet access to use it. The Internet address for Customs home page is <http://www.customs.ustreas.gov>.

Customs Regulations

The current edition of *Customs Regulations of the United States*, in loose-leaf format, is available by subscription from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. The bound 1996 Edition of Title 19, *Code of Federal Regulations*,

which incorporates all changes to the *Customs Regulations* from April, 1995 through March, 1996 is also available for sale from the same address. All proposed and final regulations are published in the *Federal Register* which is published daily by the Office of the Federal Register, National Archives and Records Administration, and distributed by the Superintendent of Documents. Information on on-line access to the *Federal Register* may be obtained by calling (202) 512-1530 between 7 am. and 5 p.m. Eastern time. These notices are also published in the weekly *Customs Bulletin* described below.

Customs Bulletin

The *Customs Bulletin and Decisions* ("Customs Bulletin") is a weekly publication which contains decisions, rulings, regulatory proposals, notices and other information of interest to the trade community. It also contains decisions issued by the U.S. Court of International Trade and Customs related decisions of the U. S. Court of Appeals for the Federal Circuit. Bound volumes are issued annually. The Customs Bulletin is available for sale from the Superintendent of Documents.

Video Tapes

The U. S. Customs Service has prepared a two hour video tape in VHS format to assist Customs officers and members of the public in understanding the new *Rules of Origin for Textiles and Apparel Products* which became effective on July 1, 1996. Copies of this tape are available from many trade organizations, customs brokers, consultants and law firms. The tape may also be purchased for \$20.00 (U.S. funds) directly from the Customs Service. If you require further information, or would like to purchase one or more tapes, please forward your written request to: U.S. Customs Service, Office of Regulations and Rulings, 1301 Constitution Avenue, NW, Franklin Court, Washington, DC 20229, Attn: Operational Oversight Division. Orders must be accompanied by a check or money order drawn on a U.S. financial institution and made payable to U.S. Customs Service.

Informed Compliance Publications

The U.S. Customs Service has also prepared other Informed Compliance publications in the *What Every Member of the Trade Community Should Know About*: series, which are available from the Customs Electronic Bulletin Board and the Customs Home Page (see above). As of the date of this publication, the following booklets were available:

- Fibers & Yarns
- Buying & Selling Commissions
- NAFTA for Textiles & Textile Articles
- Raw Cotton
- Customs Valuation
- Textile & Apparel Rules of Origin
- Mushrooms
- Marble
- Peanuts

Check the Customs Electronic Bulletin Board and the Customs Home Page for more recent publications.

Other Value Publications

Customs Valuation under the Trade Agreements Act of 1979 is a 96-page book containing a detailed narrative description of the customs valuation system, the customs valuation title of the Trade Agreements Act (§ 402 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (19 U.S.C. § 1401a)), the Statement of Administrative Action which was sent to the U.S. Congress in conjunction with the TAA, regulations (19 C.F.R. §§ 152.000-152.108) implementing the valuation system (a few sections of the regulations have been amended subsequent to the publication of the book) and questions and answers concerning the valuation system. A copy may be obtained from the U.S. Customs Service, Office of Regulations and Rulings, Value Branch, 1301 Constitution Avenue, N.W., Franklin Court Building, Washington, D.C. 20229.

Customs Valuation Encyclopedia (with updates) is comprised of relevant statutory provisions, Customs Regulations implementing the statute, portions of the Customs Valuation Code, judicial precedent, and administrative rulings involving application of valuation law. A copy may be purchased for a nominal charge from the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7054.

Additional information may be obtained from Customs ports of entry. Please consult your telephone directory for a Customs office near you. The listing will be found under U.S. Government, Treasury Department.

The information provided in this publication is for general information purposes only. Recognizing that many complicated factors may be involved in customs Classification issues, an importer may wish to obtain a ruling under Customs Regulations, 19 C.F.R. Part 177, or obtain advice from an expert (such as a licensed Customs Broker, attorney or consultant) who specializes in Customs matters. Reliance solely on the general information in this pamphlet may not be considered reasonable care.

**PUBLIC MEETING ON THE MEANING OF
"CUSTOMS BUSINESS"**

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of meeting.

SUMMARY: This notice announces that a public meeting will be held in Hearing Room B of the Interstate Commerce Commission Building in Washington, D.C., commencing at 10:00 a.m. on Tuesday, January 28, 1997. The purpose of this meeting is to (1) provide the public with a briefing on Customs interpretation of the meaning of "customs business" as provided in section 641(a)(2) of the Tariff Act of 1930 (19 U.S.C. 1641 (a)(2)), as amended by Title VI of the North American Free Trade Agreement Implementation Act (Public Law 103-182); (2) surface and discuss differing public interpretations of this definition and related issues; and, (3) explore options for clarifying the differing interpretations. Due to limitations on available seating, those planning to attend are requested to notify Customs in advance.

DATES: January 28, 1997, from 10:00 a.m. to 2:00 p.m.

ADDRESS: Interstate Commerce Commission Building, Hearing Room B, 12th Street & Constitution Avenue, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Dale Snell, "Mod Act" Task Force, U.S. Customs Service, Franklin Court, 1301 Constitution Avenue, N.W., Washington, D.C. 20229. Phone: (202) 482-6987; FAX: (202) 482-6994.

SUPPLEMENTARY INFORMATION:

On December 8, 1993, the President signed the "North American Free Trade Agreement Implementation Act." The Customs modernization portion of this Act (Title VI of Public Law 103-182), popularly known as the Customs Modernization Act or "Mod Act," amended the definition of "customs business" as contained in 19 U.S.C. 1641(a)(2) to provide, among other things, that such business includes the preparation of documents but does not include the mere transmission of data received for transmission to Customs. The amended definition in 19 U.S.C. 1641(a)(2) now reads:

The term "customs business" means those activities involving transactions with the Customs Service concerning the entry and admissibility of merchandise, its classification and valuation, the payment of duties, taxes, or other charges, assessed or collected by the Customs Service upon merchandise by reason of its importation, or the refund, rebate, or drawback thereof. It also includes the preparation of documents or forms in any format and the electron-

ic transmission of documents, invoices, bills, or parts thereof, intended to be filed with the Customs Service in furtherance of such activities, whether or not signed or filed by the preparer, or activities relating to such preparation, but does not include the mere electronic transmission of data received for transmission to Customs.

As Customs has focussed on the development of regulations to implement the Customs broker provisions of the "Mod Act," it has become clear that there are different opinions on how the definition of "customs business" in 19 U.S.C. 1641, should be interpreted. Based on the language of the statute, discussion in the legislative history of the "Mod Act," and input received from the trade community, Customs set forth its understanding of the term in a draft proposed regulatory document that was posted on the Customs Electronic Bulletin Board (CEBB) on October 7, 1996, and subsequently, on the Customs Web site.

To share its understanding of "customs business" with interested parties and give those parties an opportunity to ask questions and express their reactions and interpretations in an environment conducive to meaningful dialogue, Customs has decided to hold a public meeting. It is anticipated that different trade interests (including, but not limited to brokers, consultants, attorneys, accountants, carriers, drawback preparers, and foreign trade zone operators) will come prepared to discuss perceived rights and obligations of licensed Customs brokerage businesses and individual brokers and perceived limitations on activities that unlicensed individuals can perform on behalf of clients. Because seating is limited, reservations will be required. Persons planning to attend are requested to notify Mr. Dale Snell by FAX at (202) 482-6994 or by phone at (202) 482-6987.

Dated: December 17, 1996.

JOHN DURANT,
Director,
"Mod Act" Task Force.

[Published in the Federal Register, December 24, 1996 (61 FR 67871)]

**REVIEW OF INTERIM LIST OF RECORDS REQUIRED TO BE
MAINTAINED AND PRODUCED UNDER 19 U.S.C. 1509(a)(1)(A)**

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice of plan to review Interim "(a)(1)(A) list".

SUMMARY: An interim list of entry records or entry information required to be maintained and produced under section 509(a)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1509(a)(1)(A)), as amended by title VI of the North American Free Trade Agreement Implementation Act, was published in the *CUSTOMS BULLETIN* on January 3, 1996, and subsequently reproduced in the Federal Register on July 15, 1996. Since publication of the list, the Customs Service has received numerous comments suggesting that the content of its Interim (a)(1)(A) list is excessive. In response to these comments, Customs has initiated a project intended to remove from the list any and all entry records and information requirements that are clearly unnecessary in today's environment. To assist it in achieving this objective, Customs is soliciting input from businesses impacted by the (a)(1)(A) list, trade associations, and other agencies.

DATE: Comments must be received on or before January 23, 1997.

ADDRESSES: Comments in triplicate should be addressed to the Office of Regulations and Rulings, U.S. Customs Service, 1301 Constitution Avenue NW (Franklin Court), Washington, D.C. 20229, Attention: (a)(1)(A) List Review Project. Comments may be inspected at the Office of Regulations and Rulings, Suite 4000W, 1099 14th Street NW, Washington, DC 20005. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), §1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), during regular business days between the hours of 9:00 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Stuart Seidel, Assistant Commissioner, Office of Regulations and Rulings at (202) 482-6920 or Jerry Laderberg, Chief, Entry Procedures & Carriers Branch, Office of Regulations and Rulings at (202) 482-6940.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Section 509(a)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1509(a)(1)(A)) as amended by section 615 of title VI of the North American Free Trade Agreement Implementation Act (generally referred to as the "Customs Modernization Act") requires the maintenance and production of a record if "such record is required by law or regulation for the entry of merchandise (whether or not the Customs Service required its presentation at the time of entry)." Section 509 contains a

new subsection (e) which requires the Customs Service to identify and publish a list of records or entry information that is required to be maintained and produced under section 509(a)(1)(A) — commonly referred to as “the (a)(1)(A) list.” On September 12, 1994, Customs invited comments on a “proposed” (a)(1)(A) list that it posted on the Customs Electronic Bulletin Board. Subsequently, on September 21, 1994, Customs published a *CUSTOMS BULLETIN* containing this same list and invitation for comments. Eleven comments were received. After reviewing these comments and modifying its “proposed” (a)(1)(A) list, the Customs Service published an Interim (a)(1)(A) list in the *CUSTOMS BULLETIN* on January 3, 1996. This same list was posted on the Customs Electronic Bulletin Board on January 4, 1996, and it was reproduced in the Federal Register on July 15, 1996.

Recognizing that almost one year has passed since publication of its Interim (a)(1)(A) list and in response to a significant number of comments suggesting that the list contains too many records, Customs is undertaking a complete review of the list and the underlying regulations. Customs objective is to remove from the list any and all records and information requirements that are clearly unnecessary in today’s environment. To assist it in achieving this objective, Customs is soliciting input from businesses impacted by the (a)(1)(A) list, trade associations, and other agencies.

Customs interest is not in receiving general comments recommending that particular record or information requirements be eliminated from the list. Customs interest is in receiving comments that specifically identify why a particular record or information requirement can be eliminated from the (a)(1)(A) list without modification of existing statutes. In the conduct of its review, the Customs Service intends to reconsider comments previously submitted. Accordingly, resubmission of such comments will be unnecessary.

Dated: December 18, 1996.

STUART P. SEIDEL,
Assistant Commissioner,
Office of Regulations and Rulings.

[Published in the Federal Register, December 24, 1996 (61 FR 67872)]

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, December 10, 1996.

The following documents of the United States Customs Service, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs Service field offices to merit publication in the CUSTOMS BULLETIN.

STUART P. SEIDEL,
*Assistant Commissioner,
Office of Regulations and Rulings.*

**PROPOSED REVOCATION OF RULING LETTER RELATING TO
TARIFF CLASSIFICATION OF WOMEN'S PAJAMAS**

AGENCY: U.S. Customs Service, Department of Treasury.

ACTION: Notice of proposed revocation of tariff classification ruling letter.

SUMMARY: Pursuant to section 625(c)(1) of the Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling pertaining to the tariff classification of women's pajamas.

DATE: Comments must be received on or before February 3, 1997.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Tariff Classification Appeals Division, 1301 Constitution Avenue, NW (Franklin Court), Washington, D.C. 20229. Comments submitted may be inspected at the Tariff Classification Appeals Division, Office of Regulations and Rulings, located at Franklin Court, 1099 14th Street, NW, Suite 4000, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Rebecca A. Hollaway, Tariff Classification Appeals Division (202) 482-6996.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to section 625(c)(1) of the Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Moderniza-

tion) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the tariff classification of women's pajamas.

In NY 811323, dated July 7, 1995 a T-shirt styled knit top and a pair of woven flannel boxer shorts were classified separately under subheadings 6109.10.0070 (T-shirt) and 6204.62.4055 (shorts), Harmonized Tariff Schedule of the United States (HTSUS). This ruling was based on Customs belief that the garments have the general appearance of sportswear that is not intended to be worn exclusively in the privacy of the bedroom. NY 811323 is set forth as "Attachment A" to this document. It is now Customs position that the principal use of the garments is sleepwear/pajamas.

Customs intends to revoke NY 811323 to reflect the proper classification of women's pajamas under subheading 6208.21.0010, HTSUS. Before taking this action, we will give consideration to any written comments timely received. Proposed HQ 958717 revoking NY 811323 is set forth as "Attachment B" to this document.

Claims for detrimental reliance under section 177.9, Customs Regulations (19 CFR 177.0), will not be entertained for actions occurring on or after the date of publication of this notice.

Dated: December 10, 1996.

JOHN ELKINS,
(for John Durant, Director,
Tariff Classification Appeals Division.)

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
New York, NY, July 7, 1995.
CLA-2-61:S:N:N5:361 811323
Category: Classification
Tariff No. 6109.10.0070 and 6204.62.4055

MS. HELEN URBAITEL
IMPORT MANAGER
INNER WORLD
30 E. 33rd Street
New York, NY 10016

Re: The tariff classification of women's t-shirt styled garment, and shorts from Costa Rica.

DEAR MS. URBAITEL:

In your letter dated June 9, 1995, you requested a tariff classification ruling for two garments. Your samples are being returned, as you requested.

Styles 6745/4745 consists of a t-shirt styled garment and a pair of shorts. The T-shirt styled garments is constructed from 60% cotton, 40% polyester jersey knit fabric. It features a pocket and edging at the bottom that matches the fabric of the shorts. The shorts are constructed from 100% cotton flannel fabric and feature an elasticized waistband.

You have indicated that you would like these garments classified as pajamas. However, based on the general appearance of the garments, it is our opinion that they need not necessarily be worn in an intimate setting or to bed as sleepwear. As such, they are properly classified as a t-shirt styled garment and shorts.

The applicable subheading for the t-shirt styled garment will be 6109.10.0070, Harmonized Tariff Schedule of the United States (HTS), which provides for knitted T-shirts and similar garments, of cotton, for women. The rate of duty will be 20.6 percent ad valorem.

The applicable subheading for the shorts will be Harmonized Tariff Schedule of the United States (HTS), which provides for women's shorts of cotton. The rate of duty will be 17.6 percent ad valorem.

The T-shirt style garments fall within textile category designation 339; the shorts fall within textile category 348. Based upon international textile trade agreements, products of Costa Rica are subject to a visa requirement and quota restraints.

The designated textile and apparel category may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which subject to frequent renegotiations and changes, to obtain the most current information available, we suggest that you check, close to the time of shipment, the *Status Report On Current Import Quotas (Restraint Levels)*, an internal issuance of the U.S. Customs Service, which is available for inspection at your local Customs office.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

JEAN F. MAGUIRE,
Area Director,
New York Seaport.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC,

CLA-2 RR:TC:TE 958717 RH
Category: Classification
Tariff No. 6208.21.0010

DIANE L. WEINBERG, Esq.
SANDLER, TRAVIS & ROSENBERG, P.A.
505 Park Avenue
New York, NY 10022-1106

Re: Request for reconsideration of NY 811323; pajamas; subheading 6208.21.0010; T-shirts; subheading 6109.10.0070; shorts; subheading 6204.62.4055; revocation of NY 811323.

DEAR Ms. WEINBERG:

This is in reply to your letter of November 21, 1995, on behalf of your client, Inner World, requesting reconsideration of NY 811323, dated July 7, 1995. In that ruling the garments in question are classified under subheading 6109.10.0070 of the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), (knitted T-shirts and similar cotton garments for women) and subheading 6204.62.4055, HTSUSA, (women's cotton shorts). You seek classification of these garments under subheading 6208.21.0010, HTSUSA, which provides for women's pajamas. You submitted a sample of the garments to aid in our determination.

Facts:

The merchandise under consideration is women's pajamas, style 6745/4745, comprised of a T-shirt styled knit top and a pair of woven flannel boxer shorts. The T-shirt is

constructed from 60 percent cotton and 40 percent polyester jersey knit fabric. The body of the shirt is a solid color and features a contrasting colored neckband, a chest pocket, and a shirttail bottom with edging. The patch pocket and bottom edging match the fabric in the shorts. The shorts are constructed from one hundred percent cotton woven fabric with a plaid design formed by two or more colored yarns. They also feature an elasticized waistband.

In NY 811323, dated July 7, 1995, Customs classified the top as a garment similar to a T-shirt in subheading 6109.10.0070. The bottom was classified as shorts in subheading 6204.62.4055. You argue that the garments should be classified together as pajamas under subheading 6208.21.0010, because they are used principally as sleepwear.

Issue:

Whether the garments in question are classified separately as a T-shirt and shorts or as pajamas under subheading 6208.21.0010?

Law and Analysis:

Classification of goods under the HTSUSA is governed by the General Rules of Interpretation (GRI). GRI 1 provides that classification shall be determined according to the terms of the heading and any relative section or chapter notes.

Heading 6208, HTSUSA, provides, in part, for women's or girls' nightdresses, pajamas, negligees, bathrobes, dressing gowns and similar articles.

The underwear and sleepwear provision of the tariff schedule are *eo nomine* by use provision. Headquarters Ruling Letter (HQ) 089790, dated June 23, 1991. That is, merchandise is classifiable under the appropriate provision if it is used as sleepwear or as underwear. In this regard, Additional U.S. Rule of Interpretation 1(a) provides that "a tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use." Principal use is that use which exceeds other single use. HQ 089790, dated June 23, 1991.

Your primary contention is that the garments in question are classified as pajamas in subheading 6208.21.0010, because they belong to a class or kind of merchandise that is principally used made, marketed and sold as women's sleepwear. In support of your claim, you state that the garments have the physical characteristics of merchandise designed to be worn for sleeping (*i.e.*, they are loose fitting, manufactured from lightweight fabrics, do not have pockets, and are sized small, medium or large). Additionally, you state that the garments move in a channel of trade which sells sleepwear, that they are designed, manufactured and imported as sleepwear, and that the importer only manufactures, distributes or sells merchandise to intimate apparel buyers.

In determining the classification of garments submitted to be sleepwear, Customs considers the factors discussed in two Court of International Trade decisions, which you cite in your request for reconsideration. In *Mast Industries, Inc., v. United States*, 9 CIT 549, 552 (1985), aff'd 786 F.2d 1144, the court cited several lexicographic sources which defined "nightclothes" as "garments to be worn to bed." The court further held that since the garment at issue (a garment claimed to be sleepwear) was designed, manufactured, and used as nightwear it was, therefore, classifiable as nightwear. *Id.* at 553. Similarly, in *St. Eve International v. United States*, 11 CIT 224 (1987), the court ruled that since the garments in that case were manufactured, marketed and advertised as nightwear and were chiefly used as nightwear, they should be classified. *See*, HQ 088192, dated February 20, 1991 (merchandise is viewed in the commercial arena in determining principal use).

In the instant case, Customs verified the importer's claims that the garments are ordered, invoiced and purchased as sleepwear and ultimately sold as such. Accordingly, we find that the principal use of the garments is sleepwear/pajamas.

Next, we must determine under which heading to classify the pajamas. Note 13, Section XI, states: "Unless the context otherwise requires, textile garments of different headings are to be classified in their own headings even if put up in sets for retail sale." However, Customs has held that pajamas consisting of a top and bottom which together create a unit are an exception to Note 13, subject to the language "unless the context otherwise requires." HQ 956492, dated September 19, 1994. Pajama components entered together are, therefore, classified together under the appropriate pajama provision.

Women's pajamas are classified in either heading 6108 or heading 6208, depending on whether they are knit or woven. In this case, the pajama top is knit and the bottom is wo-

ven. Therefore, following GRI 3(a), headings 6108 and 6208 are equally specific and we must look to GRI 3(b), which provides:

Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), Shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

Two piece pajamas are composite goods. HQ 956492, dated September 19, 1994, and HQ 956202, dated September 29, 1994. Composite goods are goods that consist of two or more components and which are treated as a unit for tariff purposes. In pajama cases, in the absence of unusual circumstances, the top and bottom garment are equally essential and, therefore, classification must be based upon GRI 3(c) which requires classification under the heading which occurs last in numerical order of the heading which merit equal consideration. As the pajamas may be classified under the heading 6108, based upon the knit top, or heading 6208, based upon the woven bottoms, and heading 6208 appears last in numerical order, that is the heading under which the pajamas are classified. See, HQ 956492, dated September 19, 1994.

Holding:

The classification of women's pajamas style number 6745/4745, is under subheading 6208.21.0010, HTSUSA, which provides for "Women's or girls' * * * pajamas * * * and similar articles: Nightdress and pajamas: Of cotton * * * With two or more colors in the warp and/or the filling * * *." These items are dutiable at the column one general rate of 9.4 percent ad valorem and the textile category is 351.

NY 811323 is hereby revoked.

JOHN DURANT,

Director,

Tariff Classification Appeals Division.

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, December 18, 1996.

The following documents of the United States Customs Service, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs Service field offices to merit publication in the CUSTOMS BULLETIN.

STUART P. SEIDEL,
*Assistant Commissioner,
Office of Regulations and Rulings.*

**PROPOSED MODIFICATION OF CUSTOMS RULING LETTERS
RELATING TO TARIFF CLASSIFICATION OF BRIEFCASES
AND SIMILAR ARTICLES**

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed modification of tariff classification ruling letters.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057 (1993)), this notice advises interested parties that Customs intends to modify two ruling letters pertaining to the tariff classification of attache cases, briefcases, and similar articles. Comments are invited with respect to the correctness of the proposed ruling.

DATE: Comments must be received on or before February 3, 1997.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Tariff Classification Appeals Division, 1301 Constitution Avenue, NW. (Franklin Court), Washington, D.C. 20229. Comments submitted may be inspected at the Tariff Classification Appeals Division, Office of Regulations and Rulings, located at Franklin Court, 1099 14th St., NW., Suite 4000, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Greg Deutsch, Office of Regulations and Rulings, Textile Branch (202) 482-6976.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Moderniza-

tion) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057 (1993)), this notice advises interested parties that Customs intends to modify two ruling letters pertaining to the classification of attache cases, briefcases, and similar articles. Comments are invited with respect to the correctness of the proposed ruling.

In Headquarters Ruling Letters (HQ) 955655 and 955656, both issued July 14, 1994, Customs found that three articles, identified by separate style numbers, were *prima facie* classifiable in headings 4202 and 4820, Harmonized Tariff Schedule of the United States Annotated (HTSUSA). Heading 4202, HTSUS, provides, in part, for attache cases, briefcases, and similar containers. Among other goods, heading 4820, HTSUS, covers notebooks, letter pads, memorandum pads, diaries and similar articles. Two of the styles were, pursuant to General Rule of Interpretation (GRI) 3(b), classified under heading 4202, HTSUS, due to findings that the essential character of each style was imparted by the physical characteristics of exemplars described in heading 4202. Because of an inability to determine whether the characteristics of a carrying case or of an organizer/planner imparted the essential character, the remaining style, pursuant to GRI 3(c), was classified under heading 4820, HTSUS, the heading which occurs last in numerical order among those said to have merited equal consideration. HQ 955655 and HQ 955656 are set forth, respectively, as Attachments "A" and "B" to this document.

In 1994, note 1(g) to chapter 48, HTSUS, stated that "This chapter does not cover: Articles of heading 4202 (for example, travel goods)." (The exclusion is currently contained in note 1(h) to chapter 48, HTSUS.) GRI 1 requires that "classification shall be determined according to the terms of the headings and any relative section or chapter notes." The rule allows that other GRI may be used "provided such headings or notes do not otherwise require." In these cases, the competition between headings 4202 and 4820, HTSUS, is resolved by chapter note 1(g), which excludes articles of heading 4202 from Chapter 48. Since the legal note does require that other GRI not be used to determine classification, it is Customs position that all three styles must be classified pursuant to GRI 1. Therefore, this office's findings in HQ 955655 and HQ 955656, that the three styles were *prima facie* classifiable in heading 4202, HTSUS, precluded classification of any article under Chapter 48, and rendered analysis pursuant to GRI 3 inappropriate. The following proposed rulings modifying, respectively, the rulings set forth as Attachments "A" and "B" above, are set forth as Attachments "C" and "D" to this document: 959791 and 959792.

Claims for detrimental reliance under section 177.9, Customs Regulations (19 CFR 177.9), will not be entertained for actions occurring on or after the date of publication of this notice.

Dated: December 12, 1996.

JOHN ELKINS,
(for John Durant, Director,
Tariff Classification Appeals Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, July 14, 1994.

CLA-2 CO:R:C:T 955655 ch
Category: Classification
Tariff No. 4820.10.2010,
4820.10.2050 and 4202.11.0030

JAMES CAFFENTZIS, ESQ.
FITCH, KING AND CAFFENTZIS
116 John Street
New York, NY 10038

Re: Classification of portfolio planners; attache cases; briefcases from China or India; notebooks; diaries.

DEAR MR. CAFFENTZIS:

This is in response to your letter of December 29, 1993, requesting tariff classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) for certain articles described as portfolio planners. Samples were provided to this office for examination.

Facts:

Five samples were submitted for examination. Four samples are cases with an exterior of leather and a polyurethane coating measuring, on average, between 0.014 and 0.015 mm:

Style 3352 measures approximately 7½ inches by 10¼ inches by 1¼ inches. It consists of a case with a zipper closure and a three ring binder permanently affixed at the spine. The binder is designed to accommodate a clear plastic insert imprinted with an 8 inch ruler and paper pages which include a daily appointment calendar, as well as weekly and monthly calendars, with spaces and lines for personal notations. In addition, the binder will hold a personal address and telephone directory, an expense ledger, a vinyl business card holder and a vinyl supply pouch with certain insignificant office supplies such as paper clips. It features a note pad, which may be placed in the binder or slipped into a pocket on the inside of the case. The interior of the case also includes two pen holders, two flat pockets and a pocket with tapered accordion style gussets suitable for holding small objects. The exterior possesses a full wall pocket which is designed to accommodate papers.

Style 2303 measures approximately 7½ inches by 10¼ inches by ½ inch. It features a case with a zipper closure and a three ring binder permanently affixed at the spine. This article contains paper inserts substantially similar in design and function to those of style 3352. The interior includes a pocket designed to accommodate a small note pad, a flap to secure papers, a small flat pocket for holding notes and a pen holder. The exterior possesses a full wall pocket which is designed to accommodate papers.

Style 3334 measures approximately 10 inches by 14½ inches by 1 inch. It possesses a zipper closure with a combination note pad and one page pre-printed calendar inserted into a

slot on the inside of the case. The interior includes a pocket with tapered accordion style gussets running the length and width of one of the interior walls for holding personal effects. The front of the gusseted pocket features two flat pockets measuring approximately 14 inches in length, a zippered flat pocket measuring approximately 8 inches in length and three open small flat pockets. A pen holder is located on either side of the spine.

Style 3342 measures approximately 11½ inches by 14½ inches by 2½ inches. It possesses a zipper closure with a three ring binder permanently affixed at the spine. A combination note pad and one page pre-printed calendar may be inserted into a slot on the inside of the case or placed in the binder. The opposite interior wall possesses two tapered gusseted pockets with snap tab restraints. It also includes two smaller pockets with hook and loop fastener closures and three pen holders. The exterior features retractable handles and a full length pocket on each side.

Style 3877 is comprised of a case possessing an exterior surface of what appear to be man-made fibers with leather trim. This article measures approximately 10½ inches by 13½ inches by 1¼ inches. It possesses a zipper closure with a three ring binder permanently affixed at the spine. A combination note pad and one page pre-printed calendar may be inserted into a slot on the inside of the case or placed in the binder. A full wall pocket has been sewn behind the slot for the note pad. The opposite interior wall features an open full wall pocket, a zippered pocket measuring approximately 7½ inches in length, a gusseted pocket closed by means of hook and loop fasteners measuring approximately 4½ inches by 5 inches and four pen holders. It also includes an exterior handle sewn to the spine so that the article may be carried in an inverted position.

Issue:

Whether the subject merchandise is classifiable in heading 4820, HTSUSA, which provides in pertinent part for diaries, notebooks and similar articles; or heading 4202, HTSUSA, which provides in pertinent part for attache cases, briefcases and similar articles?

Law and Analysis:

In prior ruling letters, we have concluded that portfolio diaries, organizers, agendas or planners are not classifiable in heading 4202, HTSUSA. For example, in Headquarters Ruling Letter (HRL) 950325, dated December 27, 1991, we addressed the classification of an organizer consisting of a leather case enclosing a six-ring binder, with paper inserts for personal record-keeping. In that decision, we stated:

We do not believe that heading 4202, HTSUSA, describes a type of merchandise which would bring these goods within the "similar containers" of that heading. Although the "planner" may appear to be related to the containers of heading 4202, HTSUSA, **they are not similar in that they are not designed or intended for use in a similar manner, nor do they exhibit the requisite physical attributes that Customs has found common to goods of heading 4202, HTSUSA.** (Emphasis added).

Similarly, in HRL 950397, dated January 23, 1992, in connection with the classification of a portfolio planner, we observed that:

Although the planner may appear to be related to the containers of heading 4202, HTSUSA, **they are not designed or intended for use in a similar manner, nor do they exhibit the requisite physical attributes that Customs has found common to goods of heading 4202, HTSUSA.** (Emphasis added).

Thus, we have determined that portfolio diaries, organizers, agendas or planners are generally excluded from heading 4202 as they are not used in a manner similar to, nor do they possess the physical characteristics of, articles of that heading.

The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System constitute the official interpretation of the nomenclature at the international level. While not legally binding, they do represent the considered views of classification experts of the Harmonized System Committee. It has therefore been the practice of the Customs Service to follow, whenever possible, the terms of the EN when interpreting the HTSUSA. In this instance, the EN to heading 4202 and heading 4820 shed light on the physical characteristics of articles of those headings.

The EN to heading 4820 states in pertinent part, at page 687:

This heading covers various articles of stationery, other than correspondence goods of heading 4817 and the goods referred to in Note 9 to this Chapter. It includes:

(1) Registers, account books, note books of all kinds, order books, receipt books, copy books, diaries, letter pads, memorandum pads, engagement books, address books and books, pads, etc. for entering telephone numbers.

(3) Binders designed for holding loose sheets, magazines, or the like (e.g. clip binders, spring binders, screw binders, ring binders), and folders, file covers, (other than box files) and portfolios.

(8) Book covers (binding covers and dust covers), whether or not printed with characters (title, etc.) or illustrations.

The goods of this heading may be bound with materials other than paper (e.g. leather, plastics or textile material) and have reinforcements or fittings of metal, plastics, etc. (Emphasis added).

The EN to heading 4202 provides in part, at page 613, that:

The heading does not cover:

(c) Articles which, although they may have the character of containers, are not similar to those enumerated in the heading, for example, book covers and reading jackets, file-covers, document-jackets, blotting pads, photoframes, sweetmeat boxes, tobacco jars, ashtrays, flasks made of ceramics, glass, etc., and which are wholly or mainly covered with leather, sheeting of plastics, etc. Such articles fall in heading 42.05 if made of (or covered with) leather or composition leather, and in other Chapters if made of (or covered with) other materials. (Emphasis added).

Taken together, the EN indicate that articles of 4820 include portfolios, ring binders and folders designed for holding papers. They include items that are bound with leather or textile material. Heading 4820 encompasses articles of stationery with jackets or covers. On the other hand, heading 4202 excludes containers which have the character of jackets or covers. In addition, we note that heading 4202 includes articles such as attache cases, briefcases and similar containers. We infer that attache cases and briefcases are included within 4202 as they are containers which have the character of carrying cases for documents, papers and other objects.

Each of the instant articles are similar in use and design to articles of heading 4820. They are at least in part designed as organizational or planning tools, which we have determined are uses not normally associated with articles of heading 4202. Moreover, they possess features such as leather cases, metal binders, and paper inserts which are characteristic of articles classified within heading 4820. Finally, the leather or textile cases act as protective covers or jackets for their contents. Consequently, the subject merchandise is *prima facie* classifiable in heading 4820, HTSUSA.

The articles of heading 4820, HTSUSA, are segregated at the six and eight-digit classification levels. In HRL 955636, dated April 6, 1994, we addressed the scope of subheading 4820.10.2010, HTSUSA, which provides in part for diaries:

We think it is imperative to recognize that there are many forms of "diaries." Many are similar to the instant articles. Others, may be bound with expensive materials such as leather and may contain additional components such as pens, pencils, calculators, business card holders and assorted inserts that are used either for providing information or as a means of recording specific types of information (i.e., sections for fax numbers, car maintenance information, personal finance data, etc. * * *). As the court in *Brooks Bros.* noted, citing *Hancock Gross, Inc. v. United States*, 64 Cust. Ct. 97, C.D. 3965 (1970), "[T]he primary design and function of an article controls its classification." Hence, the determinative criteria as to whether these types of articles are deemed "diaries" for classification purposes is whether they are primarily designed for use as, or primarily function as, articles for the receipt of daily notations, events and appointments. (Emphasis in original).

Styles 3352 and 2303 are substantially similar in design to articles we have concluded function primarily for the receipt of daily notations, events and appointments. See HRL 955522, dated March 23, 1994 (leather agenda with three-ring binder and paper inserts including daily engagement calendar and spaces for notation of appointments); HRL 953172, dated March 19, 1993 (metal six-ring binder mounted in folder, with paper inserts for daily and

yearly engagement calendars, personal records). Consequently, styles 3352 and 2303 are classifiable as bound diaries of subheading 4820.10.2010, HTSUSA.

Style 3334 does not function as a place for the receipt of daily notations, events and appointments. The paper insert consists of nothing more than a note pad of blank lined paper, with a one page pre-printed calendar without space for notations. While the note pad provides space for notations generally, it has not been designed to facilitate daily entries in an organized manner. The article is more specifically provided for as a notebook within heading 4820 and is therefore classifiable as a notebook in subheading 4820.10.2050, HTSUSA.

Although each of the submitted samples are *prima facie* classifiable in heading 4820, HTSUSA, styles 3342 and 3877 possess features which do not relate to their use as organizers and planners. Items 3342 and 3877 possess retractable handles and an exterior handle, respectively. They are large enough to accommodate standard size papers and documents. Style 3877 includes two exterior full wall pockets, expandable interior pockets, small pockets for various objects and is large enough to hold a newspaper or a book. Style 3877 is less roomy, but has also been designed to hold papers, pens and other objects. Taken together these physical attributes suggest that the goods have a dual use as carrying cases in a manner similar to attache cases and briefcases. Thus, these items possess features associated with both articles known as organizers or planners and articles referred to as attache cases or briefcases. Hence, we conclude that styles 3342 and 3877 are also *prima facie* classifiable in heading 4202, HTSUSA.

General Rule of Interpretation (GRI) 3 provides that when goods are *prima facie* classifiable under two or more headings, classification shall be effected as follows:

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

(c) When goods cannot be classified by reference to 3(a) or 3(b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

In this instance, headings 4202 and 4820, HTSUSA, are equally specific in relation to one another. Each heading describes a limited class of goods. Moreover, these headings describe only a portion of the physical characteristics which styles 3877 and 3342 possess. Hence, we cannot resolve the classification of these items on the basis of GRI 3(a).

However, we conclude that the physical characteristics described by heading 4202, HTSUSA, impart the essential character to style 3342. This item has been designed to accommodate virtually all of the articles normally carried in a briefcase or attache case (e.g. papers, documents, newspaper, book, pens). Although style 3342 possesses the features of an organizer or planner (e.g. ring binder, planner, organizational pockets), the leather case is, in our judgment, more than a mere cover. The planner components merely add additional features to what is otherwise an article similar to a briefcase. Consequently, style 3342 is classifiable in heading 4202.

Articles of heading 4202, HTSUSA, are classified at the subheading level with reference to their exterior surface. Style 3342 is composed of leather with a polyurethane coating that has a thickness of approximately 0.015 mm. Our administrative precedent indicates that leather handbags or attache cases to which an insignificant coating of plastics (less than 0.15 mm) has been applied are classified as articles of leather. See HRL 086339, dated May 16, 1990; HRL 084844, dated October 10, 1989; HRL 085188, dated August 25, 1989. Accordingly, style 3342 shall be classified within heading 4202 as an article of leather.

Style 3877 is also *prima facie* classifiable in both heading 4202 and heading 4820, HTSUSA. However, in this instance we are unable to conclude that either the organizer/planner or the carrying case components lend the essential character to the article. This item may be used in a manner consistent with a carrying case of heading 4202, HTSUSA. However, it is flat and will not accommodate items such as a newspaper or book which are normally carried in an attache case. The organizer components contribute at least as much, in terms of function and design, to the finished article as the carrying case components. Conse-

quently, we must resort to GRI 3(c) to classify this product. As heading 4820 is the heading which occurs last in numerical order among the headings which merit consideration, style 3877 shall be classified within heading 4820. Style 3877 does not provide space for daily notations. Hence, it shall be classified as a notebook of subheading 4820.10.2050, HTSUSA.

Holding:

Styles 3352 and 2303 are classifiable under subheading 4820.10.2010, HTSUSA, which provides for diaries and address books. The applicable rate of duty is 4 percent *ad valorem*. If these goods are products of India they may be entitled to duty-free treatment under The Generalized System of Preferences under certain circumstances.

Styles 3334 and 3877 are classifiable under subheading 4820.10.2050, HTSUSA, which provides for diaries, notebooks and address books, bound: memorandum pads, letter pads and similar articles, other. The applicable rate of duty is 4 percent *ad valorem*. If these goods are products of India they may be entitled to duty-free treatment under The Generalized System of Preferences under certain circumstances.

Style 3342 is classifiable under subheading 4202.11.0030, HTSUSA, which provides for trunks, suitcases, vanity cases, attache cases, briefcases, school satchels and similar containers: with outer surface of leather, of composition leather, or of patent leather: attache cases, brief cases, school satchels, occupational luggage cases and similar containers. The applicable rate of duty is 8 percent *ad valorem*.

HUBBARD VOLENICK,
(for John Durant, Director,
Commercial Rulings Division.)

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC, July 14, 1994.

CLA-2 CO:R:C:T 955656 ch
Category: Classification
Tariff No. 4820.10.2010,
4820.10.2050 and 4202.11.0030

JAMES CAFFENTZIS, Esq.
FITCH, KING AND CAFFENTZIS
116 John Street
New York, NY 10038

Re: Classification of portfolio planners; attache cases; briefcases from China; notebooks; diaries.

DEAR MR. CAFFENTZIS:

This is in response to your letter of December 28, 1993, requesting tariff classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) for certain articles described as portfolio planners. Samples were provided to this office for examination.

Facts:

Five samples were submitted for examination. Each article includes a leather case which you state is coated with polyurethane measuring approximately 0.015 mm in thickness.

Style 3320 measures approximately 5½ inches by 8 inches by 1½ inches. The leather case possesses a zipper closure and a six ring binder permanently affixed at the spine. The binder is designed to accommodate two rigid clear plastic inserts which protect numerous paper inserts and a clear plastic day finder imprinted with a 6 inch ruler. The paper inserts include a daily appointment calendar, as well as weekly and monthly calendars, with spaces and lines for personal notations. In addition, the binder will hold a personal address/telephone directory, sections for personal, priority action, expense and objective notes, and a

vinyl business card holder. Style 3320 includes a note pad, which may be placed in the binder or slipped into a pocket on the inside of the case. The opposite interior wall features a pen holder, a flat pocket measuring approximately 4½ inches by 2¾ inches and a flap to hold loose papers.

Style 3333 measures approximately 8 inches by 10 inches by 1½ inches. The case possesses a zipper closure and a three ring binder permanently affixed at the spine. This article contains plastic and paper inserts substantially similar in design and function to those of style 3320. A combination note pad and one page pre-printed calendar may be placed in the binder or slipped into a pocket of the case. The opposite interior wall features a full wall pocket with tapered accordion style gussets. Affixed to this pocket are two pen holders and two small flat pockets each measuring approximately 2½ inches by 4½ inches. The exterior possesses a pocket measuring approximately 10 inches by 6 inches which is designed to accommodate papers.

Style 3340 is a folio style case which measures approximately 9½ inches by 14½ inches by 1 inch. It is secured by means of a patented snap closure. The exterior features a full-sized zippered pocket with a tapered gusset. A combination note pad and one page pre-printed calendar is inserted into a slot on the inside of the case. An identification card holder has been placed over the slot and four pen holders surround the space for the pad. The opposite interior wall includes an open full wall pocket with a tapered accordion style gusset. The front of the gusseted pocket features a zippered pocket measuring approximately 8 inches by 4½ inches; two small flat pockets; and a pocket measuring approximately 5 inches by 4½ inches with a hook and loop fastener closure.

Style 3310 is a folio style case which measures approximately 9½ inches by 14½ inches by 1½ inches. It is secured by means of a patented snap closure. The exterior features a full-sized zippered pocket with a tapered gusset. A note pad is inserted into a slot on the inside of the case. An identification card holder has been placed over the slot. The opposite interior wall includes an open full wall pocket with a tapered accordion style gusset. The front of the gusseted pocket features a zippered pocket measuring approximately 8 inches by 4½ inches; two small flat pockets; a pocket measuring approximately 5 inches by 4½ inches with a hook and loop fastener closure; and three pen holders.

Style 3343 measures approximately 10½ inches by 13½ inches by 1½ inches. It possesses a zipper closure with a three ring binder permanently affixed at the spine. A combination note pad and one page pre-printed calendar is inserted into a slot on the inside of the case. The opposite interior wall possesses two tapered gusseted pockets measuring approximately 13 inches by 6 inches. It also includes two smaller pockets with hook and loop fastener closures, two pen holders, one small open flat pocket and a zippered pocket measuring approximately 11½ inches by 6½ inches. The exterior features a handle sewn to the spine so that the article may be carried in an inverted position. The article also has two open exterior pockets on either side of the case measuring approximately 13½ inches by 8½ inches.

Issue:

Whether the subject merchandise is classifiable in heading 4820, HTSUSA, which provides in pertinent part for diaries, notebooks and similar articles; or heading 4202, HTSUSA, which provides in pertinent part for attache cases, briefcases and similar articles?

Law and Analysis:

In prior ruling letters, we have concluded that portfolio diaries, organizers, agendas or planners are not classifiable in heading 4202, HTSUSA. For example, in Headquarters Ruling Letter (HRL) 950325, dated December 27, 1991, we addressed the classification of an organizer consisting of a leather case enclosing a six-ring binder, with paper inserts for personal record-keeping. In that decision, we stated:

We do not believe that heading 4202, HTSUSA, describes a type of merchandise which would bring these goods within the "similar containers" of that heading. Although the "planner" may appear to be related to the containers of heading 4202, HTSUSA, they are not similar in that they are not designed or intended for use in a similar manner, nor do they exhibit the requisite physical attributes that Customs has found common to goods of heading 4202, HTSUSA. (Emphasis added).

Similarly, in HRL 950397, dated January 23, 1992, in connection with the classification of a portfolio planner, we observed that:

Although the planner may appear to be related to the containers of heading 4202, HTSUSA, they are not designed or intended for use in a similar manner, nor

do they exhibit the requisite physical attributes that Customs has found common to goods of heading 4202, HTSUSA. (Emphasis added).

Thus, we have determined that portfolio diaries, organizers, agendas or planners are generally excluded from heading 4202 as they are not used in a manner similar to, nor do they possess the physical characteristics of, articles of that heading.

The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System constitute the official interpretation of the nomenclature at the international level. While not legally binding, they do represent the considered views of classification experts of the Harmonized System Committee. It has therefore been the practice of the Customs Service to follow, whenever possible, the terms of the EN when interpreting the HTSUSA. In this instance, the EN to heading 4202 and heading 4820 shed light on the physical characteristics of articles of those headings.

The EN to heading 4820 states in pertinent part, at page 687:

This heading covers various articles of stationery, other than correspondence goods of heading 4817 and the goods referred to in Note 9 to this Chapter. It includes:

(1) Registers, account books, note books of all kinds, order books, receipt books, copy books, diaries, letter pads, memorandum pads, engagement books, address books and books, pads, etc. for entering telephone numbers.

(3) Binders designed for holding loose sheets, magazines, or the like (e.g. clip binders, spring binders, screw binders, ring binders), and folders, file covers, (other than box files) and portfolios.

(8) Book covers (binding covers and dust covers), whether or not printed with characters (title, etc.) or illustrations.

The goods of this heading may be bound with materials other than paper (e.g. leather, plastics or textile material) and have reinforcements or fittings of metal, plastics, etc. (Emphasis added).

The EN to heading 4202 provides in part, at page 613, that:

The heading does not cover:

(c) Articles which, although they may have the character of containers, are not similar to those enumerated in the heading, for example, book covers and reading jackets, file covers, document jackets, blotting pads, photo-frames, sweetmeat boxes, tobacco jars, ashtrays, flasks made of ceramics, glass, etc., and which are wholly or mainly covered with leather, sheeting of plastics, etc. Such articles fall in heading 42.05 if made of (or covered with) leather or composition leather, and in other Chapters if made of (or covered with) other materials. (Emphasis added)

Taken together, the EN indicate that articles of 4820 include portfolios, ring binders and folders designed for holding papers. They include items that are bound with leather or textile material. Heading 4820 encompasses articles of stationery with jackets or covers. On the other hand, heading 4202 excludes containers which have the character of jackets or covers. In addition, we note that heading 4202 includes articles such as attache cases, briefcases and similar containers. We infer that attache cases and briefcases are included within 4202 as they are containers which have the character of carrying cases for documents, papers and other objects.

Each of the instant articles are similar in use and design to articles of heading 4820. They are at least in part designed as organizational or planning tools, which we have determined are uses not normally associated with articles of heading 4202. Moreover, they possess features such as leather cases, metal binders, and paper inserts which are characteristic of articles classified within heading 4820. Finally, the leather cases act as protective covers or jackets for their contents. Hence, the subject merchandise is *prima facie* classifiable in heading 4820, HTSUSA.

The articles of heading 4820, HTSUSA, are segregated at the six and eight-digit classification level. In HRL 955636, dated April 6, 1994, we addressed the scope of subheading 4820.10.2010, HTSUSA, which provides in part for diaries:

We think it is imperative to recognize that there are many forms of "diaries." Many are similar to the instant articles. Others, may be bound with expensive materials such as

leather and may contain additional components such as pens, pencils, calculators, business card holders and assorted inserts that are used either for providing information or as a means of recording specific types of information (i.e., sections for fax numbers, car maintenance information, personal finance data, etc. * * *). As the court in *Brooks Bros.* noted, citing *Hancock Gross, Inc. v. United States*, 64 Cust. Ct. 97, C.D. 3965 (1970), "[T]he primary design and function of an article controls its classification." Hence, the determinative criteria as to whether these types of articles are deemed "diaries" for classification purposes is whether they are primarily designed for use as, or primarily function as, articles for the receipt of daily notations, events and appointments. (Emphasis in original).

Styles 3320 and 3333 are substantially similar in design to articles we have concluded function primarily for the receipt of daily notations, events and appointments. See HRL 955522, dated March 23, 1994 (leather agenda with three-ring binder and paper inserts including daily engagement calendar and spaces for notation of appointments); HRL 953172, dated March 19, 1993 (metal six-ring binder mounted in folder, with paper inserts for daily and yearly engagement calendars, personal records) Consequently, these styles are classifiable as bound diaries of subheading 4820.10.2010, HTSUSA.

Styles 3340 and 3310 do not function as a place for the receipt of daily notations, events and appointments. The paper inserts consist of nothing more than a note pad of blank lined paper, with a one page pre-printed calendar without space for notations included as part of style 3340. The articles are more specifically provided for as a notebook within heading 4820. While the note pads provide space for notations generally, they have not been designed to facilitate daily entries in an organized manner. Therefore, styles 3340 and 3310 are classifiable as notebooks in subheading 4820.10.2050, HTSUSA.

Although each of the submitted samples are *prima facie* classifiable in heading 4820, HTSUSA, style 3343 possesses features which do not relate to its use as an organizer and planner. This item possesses a handle and is large enough to accommodate standard size papers and documents. It includes two large exterior pockets, expandable interior pockets, small pockets for various objects and is large enough to hold a newspaper or a book. These physical attributes suggest that the article has a dual use as a carrying case in a manner similar to attache cases and briefcases. Thus, this item possesses features associated with both articles known as organizers or planners and articles referred to as attache cases or briefcases. On this basis, we conclude that style 3343 is also *prima facie* classifiable in heading 4202, HTSUSA.

General Rule of Interpretation (GRI) 3 provides that when goods are *prima facie* classifiable under two or more headings, classification shall be effected as follows:

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a); shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

(c) When goods cannot be classified by reference to 3(a) or 3(b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

In this instance, headings 4202 and 4820, HTSUSA, are equally specific in relation to one another. Each heading describes a limited class of goods. Moreover, these headings describe only a portion of the physical characteristics which style 3343 possesses. Hence, we cannot resolve the classification of this item on the basis of GRI 3(a).

However, we conclude that the physical characteristics described by heading 4202, HTSUSA, impart the essential character to style 3343. This item has been designed to accommodate virtually all of the articles normally carried in a briefcase or attache case (e.g. papers, documents, newspaper, book, pens). Although style 3343 possesses the features of an organizer or planner (e.g. ring binder, planner, organizational pockets), the leather case is, in our judgment, more than a mere cover. The planner components merely add additional features to what is otherwise an article similar to a briefcase. Consequently, style 3343 is classifiable in heading 4202.

Articles of heading 4202, HTSUSA, are classified at the subheading level with reference to their exterior surface. Style 3343 is composed of leather with a polyurethane coating that has a thickness of approximately 0.015 mm. Our administrative precedent indicates that leather handbags or attache cases to which an insignificant coating of plastics (less than 0.15 mm) has been applied are classified as articles of leather. See HRL 086339, dated May 16, 1990; HRL 084844, dated October 10, 1989; HRL 085188, dated August 25, 1989. Accordingly, style 3343 shall be classified within heading 4202 as an article of leather.

Holding:

Styles 3320 and 3333 are classifiable under subheading 4820.10.2010, HTSUSA, which provides for diaries and address books. The applicable rate of duty is 4 percent *ad valorem*.

Styles 3340 and 3310 are classifiable under subheading 4820.10.2050, HTSUSA, which provides for diaries, notebooks and address books, bound: memorandum pads, letter pads and similar articles, other. The applicable rate of duty is 4 percent *ad valorem*.

Style 3343 is classifiable under subheading 4202.11.0030, HTSUSA, which provides for trunks, suitcases, vanity cases, attache cases, briefcases, school satchels and similar containers: with outer surface of leather, of composition leather, or of patent leather: attache cases, brief cases, school satchels, occupational luggage cases and similar containers. The applicable rate of duty is 8 percent *ad valorem*.

HUBBARD VOLENICK,
(for John Durant, Director,
Commercial Rulings Division.)

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.
CLA-2 RR:TC:TE 959791 GGD
Category: Classification
Tariff No. 4202.11.0030 and 4202.12.8030

JAMES CAFFENTZIS, ESQUIRE
FTCH, KING AND CAFFENTZIS
116 John Street
New York, NY 10038

Re: Modification of Headquarters Ruling Letter (HQ) 955655; Classification of attache cases, briefcases, and similar containers; Articles Classifiable in Heading 4202 Precluded from Classification under Chapter 48, HTSUS; Note 1(g) to Chapter 48, HTSUS.

DEAR MR. CAFFENTZIS:

Of the five separate styles of articles classified in HQ 955655, issued July 14, 1994, this office found that both styles 3342 and 3877 were *prima facie* classifiable in headings 4202 and 4820, Harmonized Tariff Schedule of the United States Annotated (HTSUSA). Style 3342 was found to be an article similar to a briefcase, but with additional features. Pursuant to General Rule of Interpretation (GRI) 3(b), it was found that the essential character of style 3342 was imparted by the physical characteristics of exemplars described in heading 4202. Style 3342 was thus classified in subheading 4202.11.0030, HTSUSA, the provision for "Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels and similar containers: With outer surface of leather, of composition leather, or of patent leather, Attache cases, brief cases, school satchels, occupational luggage cases and similar containers."

With respect to style 3387, a stated inability to determine whether the characteristics of a carrying case or an organizer/planner imparted the essential character resulted in the product being classified pursuant to GRI 3(c), under heading 4820, the heading which occurs last numerically among those said to have merited equal consideration. Style 3387 was classified in subheading 4820.10.2010, HTSUSA, which provides for "Registers, ac-

count books, notebooks, order books, receipt books, letter pads, memorandum pads, diaries and similar articles: Diaries, notebooks and address books, bound; memorandum pads, letter pads and similar articles, Other."

We have reviewed HQ 955655 and have found it to be partially in error. Therefore, this ruling modifies HQ 955655.

Facts:

At the time HQ 955655 was issued, the sample identified as style 3342 was described as measuring approximately 11½ inches by 14½ inches by 2¼ inches, and possessing a zipper closure with a three ring binder permanently affixed at the spine. A combination note pad and one page pre-printed calendar could be placed in the binder or inserted into a slot on the inside of the case. The opposite interior wall possessed two tapered, gusseted pockets with snap tab restraints. Two smaller pockets with hook and loop fastener closures and three pen holders were also included. The exterior of the case featured retractable handles and a full length pocket on each side.

The sample identified as style 3387 was described as a case possessing an exterior surface of apparently man-made fibers with leather trim. The item measured approximately 10½ inches by 13¼ inches by 1¾ inches and possessed a zipper closure with a three ring binder permanently affixed at the spine. A combination note pad and one page pre-printed calendar could be placed in the binder or inserted into a slot on the inside of the case. A full wall pocket had been sewn behind the slot for the note pad. The opposite interior wall featured an open, full wall pocket, a zippered pocket measuring approximately 7½ inches in length, a gusseted pocket (with hook and loop fastener closure) measuring approximately 4½ inches by 5 inches, and four pen holders. The exterior of the case included a handle sewn to the spine for carrying the article in an inverted position.

Issue:

Whether goods that are prima facie classifiable in heading 4202, HTSUS, are precluded from classification under heading 4820, HTSUS, and required to be classified solely on the basis of GRI 1.

Law and Analysis:

Classification under the HTSUS is made in accordance with the GRI. GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUS by offering guidance in understanding the scope of the headings and GRI.

Heading 4202, HTSUS, provides, in part, for attache cases, briefcases, and similar containers. The exemplars named in heading 4202 have in common the purpose of organizing, storing, protecting, and carrying various items. In HQ 955655, both styles 3342 and 3387 were found to possess features and physical attributes associated with attache cases or briefcases. On this basis, it was concluded that the goods were prima facie classifiable in heading 4202.

Among other merchandise, heading 4820, HTSUS, covers notebooks, letter pads, memorandum pads, diaries and similar articles. In 1994, note 1(g) to chapter 48, HTSUS, stated that "This chapter does not cover: Articles of heading 4202 (for example, travel goods)." (The exclusion is currently contained in note 1(h) to chapter 48, HTSUS.)

As noted above, GRI 1 requires that "classification shall be determined according to the terms of the headings and any relative section or chapter notes." Other GRI may be used "provided such headings or notes do not otherwise require." In this case, the competition between the two headings is resolved by chapter note 1(g), which excludes articles of heading 4202 from Chapter 48. Since a note does require that other GRI not be used to determine classification, styles 3342 and 3387 must be classified pursuant to GRI 1, under heading 4202. Therefore, this office's finding in HQ 955655, that style nos. 3342 and 3387 were classifiable in Heading 4202, HTSUS, precluded the classification of either style under Chapter 48, and rendered analysis pursuant to GRI 3 inappropriate.

Holding:

The article identified as style 3387 is classified in subheading 4202.12.8030, HTSUSA, textile category 670, the provision for "Trunks * * * attache cases, briefcases, school satch-

els and similar containers: With outer surface of plastics or of textile materials: With outer surface of textile materials: Other, Attache cases, brief cases * * * and similar containers: Other: Of man-made fibers." The applicable rate of duty is 19.5 percent ad valorem.

The article identified as style 3342 remains classified in subheading 4202.11.0030, HTSUSA, the provision for "Trunks * * * attache cases, briefcases, school satchels and similar containers: With outer surface of leather, of composition leather, or of patent leather, Attache cases, brief cases * * * and similar containers." The applicable rate of duty is 8 percent ad valorem.

HQ 955655, issued July 14, 1994, is hereby modified.

JOHN DURANT,
Director,
Tariff Classification Appeals Division.

[ATTACHMENT D]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2 RR:TC:TE 959792 GGD
Category: Classification
Tariff No. 4202.11.0030

JAMES CAFFENTZIS, ESQUIRE
FITCH, KING AND CAFFENTZIS
116 John Street
New York, NY 10038

Re: Modification of Headquarters Ruling Letter (HQ) 955656; Classification of attache cases, briefcases, and similar containers; Articles Classifiable in Heading 4202 Precluded from Classification under Chapter 48, HTSUS; Note 1(g) to Chapter 48.

DEAR MR. CAFFENTZIS:

Of the five separate styles of articles classified in HQ 955656, issued July 14, 1994, this office found that style 3343 was prima facie classifiable in headings 4202 and 4820, Harmonized Tariff Schedule of the United States Annotated (HTSUSA). Style 3343 was found to be an article similar to a briefcase, but with additional features. Pursuant to General Rule of Interpretation (GRI) 3(b), it was found that the essential character of style 3343 was imparted by the physical characteristics of exemplars described in heading 4202. The article was thus classified in subheading 4202.11.0030, HTSUSA, the provision for "Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels and similar containers: With outer surface of leather, of composition leather, or of patent leather, Attache cases, brief cases, school satchels, occupational luggage cases and similar containers." We have reviewed HQ 955655 and, with regard to the legal analysis, have found it to be partially in error. Therefore, this ruling modifies HQ 955656.

Facts:

At the time HQ 955656 was issued, the sample identified as style 3343 was described as measuring approximately 10½ inches by 13½ inches by 1½ inches, and possessing a zipper closure with a three ring binder permanently affixed at the spine. A combination note pad and one page pre-printed calendar was inserted into a slot on the inside of the case. The opposite interior wall possessed two tapered, gusseted pockets measuring approximately 13 inches by 6 inches. The item also included two smaller pockets with hook and loop fastener closures, two pen holders, a small, flat pocket, and a zippered pocket measuring approximately 11½ inches by 6½ inches. The exterior of the case featured a handle sewn to the spine for carrying the article in an inverted position.

Issue:

Whether an article that is prima facie classifiable in heading 4202, HTSUS, is precluded from classification under heading 4820, HTSUS, and required to be classified solely on the basis of GRI 1.

Law and Analysis:

Classification under the HTSUS is made in accordance with the GRI. GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUS by offering guidance in understanding the scope of the headings and GRI.

Heading 4202, HTSUS, provides, in part, for attache cases, briefcases, and similar containers. The exemplars named in heading 4202 have in common the purpose of organizing, storing, protecting, and carrying various items. In HQ 955656, style 3343 was found to possess features and physical attributes associated with attache cases or briefcases. On this basis, it was concluded that the article was *prima facie* classifiable in heading 4202.

Among other merchandise, heading 4820, HTSUS, covers notebooks, letter pads, memorandum pads, diaries and similar articles. In 1994, note 1(g) to chapter 48, HTSUS, stated that "This chapter does not cover: Articles of heading 4202 (for example, travel goods)." (The exclusion is currently contained in note 1(h) to chapter 48, HTSUS.)

As noted above, GRI 1 requires that "classification shall be determined according to the terms of the headings and any relative section or chapter notes." Other GRI may be used "provided such headings or notes do not otherwise require." In this case, the competition between the two headings is resolved by chapter note 1(g), which excludes articles of heading 4202 from Chapter 48. Since a note does require that other GRI not be used to determine classification, style 3343 must be classified pursuant to GRI 1, under heading 4202. Therefore, this office's finding in HQ 955656, that style no. 3343 was classifiable in Heading 4202, HTSUS, precluded classification of the article under Chapter 48, and rendered analysis pursuant to GRI 3 inappropriate.

Holding:

The article identified as style 3343 remains classified in subheading 4202.11.0030, HTSUSA, the provision for "Trunks * * * attache cases, briefcases, school satchels and similar containers: With outer surface of leather, of composition leather, or of patent leather, Attache cases, brief cases * * * and similar containers." The applicable rate of duty is 8 percent ad valorem.

HQ 955656, issued July 14, 1994, is hereby modified.

JOHN DURANT,

Director,

Tariff Classification Appeals Division.

PROPOSED REVOCATION OF RULING LETTER RELATING TO TARIFF CLASSIFICATION OF "HI-5" PLASTIC HAND/ARM

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of tariff classification ruling letter.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling pertaining to the tariff classification of the "HI-5" plastic hand/arm. Comments are invited on the correctness of the proposed ruling.

DATE: Comments must be received on or before February 3, 1997.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Tariff Classification Appeals Division, 1301 Constitution Avenue, N.W. (Franklin Court), Washington D.C. 20229. Comments submitted may be inspected at the Tariff Classification Appeals Division, Office of Regulations and Rulings, located at Franklin Court, 1099 14th Street, N.W., Suite 4000, Washington D.C.

FOR FURTHER INFORMATION CONTACT: Mary Beth McLoughlin, Food and Chemicals Classification Branch (202) 482-7062.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling pertaining to the tariff classification of an article known as "HI-5." Comments are invited on the correctness of the proposed ruling.

In New York Ruling Letter (NYRL) 818503 dated February 22, 1996, a model of a hand/arm which is slapped to give a "high five" and emits phrases like "all right", was determined to be classifiable under subheading 3926.40.00, Harmonized Tariff Schedule of the United States (HTSUS), which provides, in pertinent part, for other articles of plastic. NYRL 818593 is set forth as "Attachment A" to this document.

We now believe that the "HI-5" plastic hand/arm is classifiable under subheading 9503.90.0060, HTSUSA, which provides, in pertinent part, for other toys with spring mechanisms. Customs intends to revoke NYRL 818503 to reflect the proper classification of the "HI-5" under subheading 9503.90.0060, HTSUSA. Before taking this action, consideration will be given to any written comments timely received. Proposed Headquarters Ruling Letter 959285 revoking NYRL 818503 is set forth in "Attachment B" to this document.

Claims for detrimental reliance under section 177.9, Customs Regulations (19 CFR 177.9) will not be entertained for actions occurring on or after the date of publication of this notice.

Dated: December 17, 1996.

JOHN ELKINS,
(for John Durant, Director,
Tariff Classification Appeals Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, February 22, 1996.

CLA-2-39:RR:NC:TP:343 818503
Category: Classification
Tariff No. 3926.40.0000

MR. ALBERT COHEN
ALBERT COHEN/"HI-5"
176 North Lake Avenue
Troy, NY 12180

Re: The tariff classification of plastic hand/arm "HI-5" from Hong Kong.

DEAR MR. COHEN:

In your letter dated January 22, 1996, you requested a tariff classification ruling.

You have submitted a product that is identified as "HI-5". The hand/arm configuration is a replica of an athlete's hand/arm. It is made of light weight plastic and is a spring action to manipulate the hand. Also there is a battery operated transmitter that emits a short phrase when the hand/arm is struck. There are no internal mechanical parts contained in this item. The "HI-5" requires the mutual hand slapping of two participants. This product will allow a fan or individual to perform the "HI-5" expressing excitement during a televised sporting event.

The applicable subheading for the plastic hand/arm "HI-5" will be 3926.40.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for other articles of plastics, and other articles of other materials of headings 3901 to 3914: statuettes and other ornamental articles. The rate of duty will be 5.3 percent ad valorem.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling contact National Import Specialist Assistant Alice Masterson at 212-466-5892.

ROGER J. SILVESTRI,
Director,
National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2 RR:TC:FC 959285 MMC
Category: Classification
Tariff No. 9503.90.0060

MR. ALBERT COHEN
ALBERT COHEN/"HI-5"
176 North Lake Avenue
Troy, NY 12180

Re: NYRL 818503 revoked; Headings 9505 and 3926.

DEAR MR. COHEN:

This is in reference to your letters of March 19, 1996, and August 20, 1996, requesting reconsideration of New York Ruling Letter (NYRL) 818503 dated February 22, 1996, in which you were advised of the classification of a "HI-5" plastic hand/arm article under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). In NYRL 818503

you were advised that the subject articles were classified under subheading 3926.40.00, HTSUS, which provides, in pertinent part, for other articles of plastic. You believe that they could be considered toys, classifiable under subheading 9503.90.0060, HTSUSA.

Facts:

The article is described as a "HI-5". It is a plastic replica of a hand and arm with spring action to manipulate the hand and arm. When an individual strikes the hand portion of the "HI-5" with their own hand, the "HI-5" springs back approximately 20". Simultaneously, a battery operated transmitter emits a series of phrases. The phrases include, but are not limited by "Yes all right!", "Way to go" etc. The arm is covered with the purchaser's choice of fabric which imitates an athletic jersey. The article is used by a person to conduct the "high five" action and this action appears to be the article's exclusive function.

The "HI-5" may be mounted on a wall and will be sold to a variety of outlets for placement in the home, office, sports bar, health spa, retail store, factory etc.

Issue:

Whether the "HI-5" is classifiable as an article of plastic or as a toy.

Law and Analysis:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI's). The systematic detail of the harmonized system is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI's may then be applied. The Explanatory Notes (EN's) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI's.

Heading 3926, HTSUS, provides for other articles of plastics, and articles of other materials of headings 3901 to 3914. Heading 9503, HTSUS, provides for "[o]ther toys; reduced-size ("scale") models *** and accessories thereof ***". The subject article's most significant constituent material is plastic. A toy, simply defined, is an object designed for the amusement of a child or an adult. The ENs to chapter 95 indicate that the chapter covers toys of all kinds, whether designed for the amusement of children or adults. The EN to heading 9503 indicates that many of the toys are mechanically or electrically operated. The phrase "designed for the amusement of" is generally understood to indicate the use of an article will be a factor when classification in Chapter 95 is being considered. We find this article to be designed to enable the user to perform a "high five" usually in connection with an amusing event, such as observing a favorite sports team gain a point. Because the "HI-5" has plastic as a constituent material and also has been determined to meet the definition of a toy, it is described by two different headings. Inasmuch as the "HI-5" is described by two different headings, it is not classifiable according to GRI 1.

GRI 3 governs goods classifiable under two or more headings. GRI 3(a) states that where goods are classifiable under two or more headings, the heading that provides the most specific description will be preferred. The Explanatory Notes, for GRI 3(a) recognize the difficulty of establishing rules for determining the heading that provides the most specific description; however, the Notes state that "[i]f the goods answer to a description which more clearly identifies them, that description is more specific than one where identification is less complete." Heading 9503, HTSUSA, provides the more specific description of the merchandise. The description "toy" identifies the article as a whole, and therefore more specifically, than identifying it based on its most significant constituent material.

For the reasons set forth in this ruling, NYRL 818503 is revoked.

Holding:

The "HI-5" is classified under subheading 9503.90.0060, HTSUSA, as "Other toys; reduced-size ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof: Other: Other: Other: Other toys having a spring mechanism" with a column one duty rate of free. NYRL 896081 is revoked.

JOHN DURANT,

Director,

Commercial Rulings Division.

PROPOSED REVOCATION OF RULING LETTER CONCERNING SUBSTANTIAL TRANSFORMATION OF LEATHER

AGENCY: U.S. Customs Service, Department of the Treasury.

AGENCY: Notice of proposed revocation of ruling letter concerning the eligibility of tanned leather for duty-free treatment under the Generalized System of Preferences (GSP).

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), this notice advises interested parties that Customs intends to revoke Headquarters Ruling Letter (HRL) 557714 dated September 9, 1994, which held that the processing of wet blue split leather into split upper leather in Mexico did not result in a double substantial transformation, but found that the split upper leather was a "product of" Mexico for purposes of the GSP. Comments are invited concerning the correctness of the proposed ruling.

DATE: Comments must be received on or before February 3, 1997.

ADDRESS: Written comments are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Tariff Classification Appeals Division, 1301 Constitution Avenue, N.W., Franklin Court, Washington, D.C. 20229. Comments submitted may be inspected at the Tariff Classification Appeals Division, Office of Regulations and Rulings, located at Franklin Court, 1099 14th St., N.W. Suite 4000, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Monika Rice, Special Classification and Marking Branch, (202) 482-6980.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), this notice advises interested parties that Customs intends to revoke HRL 557714 dated September 1994, which held that the split upper leather exported from Mexico was a "product of" Mexico for purposes of the Generalized System of Preferences because the processing of wet blue split leather into split upper leather in Mexico resulted in a substantial transformation. A copy of HRL 557714 is set forth in Attachment A to this document.

Upon reconsideration of HRL 557714, it is Customs opinion that the processing of wet blue split leather into split upper leather does not result in a substantial transformation as "wet blue" is a condition in

which the decomposition process has been stopped and at this stage it may also be referred to as being in a "tanned" condition. It is also Customs opinion, in accordance with the analysis of proposed ruling HRL 559969 set forth as Attachment B to this document, that subsequent operations performed to wet blue, are only finishing operations which do not result in a substantial transformation.

Accordingly, Customs proposes to revoke HRL 557714. Before taking this action, consideration will be given to any written comments timely received.

Dated: December 17, 1996.

JOHN DURANT,
Director,
Tariff Classification Appeals Division.

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, September 9, 1994.
CLA-2 CO:R:C:S 557714 WAS
Category: Classification

DISTRICT DIRECTOR
U.S. CUSTOMS SERVICE
P.O. Box 3130
Laredo, TX 78044-3130

Re: Application for Further Review of Protest No. 2304-93-100224 concerning the eligibility of tanned leather from Mexico for duty-free treatment under the GSP; double substantial transformation.

DEAR SIR:

This is in regard to the above-reference application for further review which was forwarded to our office for a response concerning the eligibility of tanned leather from Mexico for duty-free treatment under the Generalized System of Preferences (GSP) (19 U.S.C. 2461-2466). On March 24, and August 25, 1994, we had an opportunity to meet with counsel and his client to further discuss this Application for Further Review. Information that was submitted on April 29, and June 20, 1994 was also considered.

Facts:

The protest covers twenty-nine shipments which were entered beginning in August, 1992 through February, 1993. The entries were liquidated on March 12, 19, 26, and April 9, 1993, and the protest was timely filed on June 7, 1993.

The protestant, Prime Tanning Co., Inc. ("Prime Tanning"), is in the business of producing finished leather from raw animal hides and providing that leather to manufacturers of leather goods in the U.S. Protestant claims that in the course of processing the hides covered by the subject entries in Mexico, a double substantial transformation took place. A description of the processing of the raw hides to finished leather is set forth below.

Prime Tanning received raw hides in the U.S. which were either fresh or brine-cured to preserve them during shipping from the slaughter site. Prime Tanning then sorted and soaked the salted hides in a prepared solution, washed them, and removed the hair from the hides. Then, the hides were "bated" (delimed and organically processed) and pickled in an acid and brine solution. Pickling is a preservative operation which protestant states produced a product that was distinct from the raw hide originally received. Protestant submits

that the pickled hide could be stored for extended periods of time, and shipped from one commercial entity to another.

Protestant states that Prime Tanning did not ordinarily ship the pickled hides, but instead, performed a chrome tanning operation in the U.S., which produced a product referred to as "wet blue." The wet blue was then further processed by splitting, and the wet blue split sides were then sent to Mexico for further processing.

In Mexico, the first operation performed consisted of shaving the imported wet blue split sides. Protestant states that shaving is a high-precision operation, which requires expensive, closely-calibrated capital equipment, that must be controlled by a well-trained and skilled operator. The protestant submits that the shaving leveled the thickness of the wet blue split to the exact specifications needed by the leather goods maker for the production of a given end product. Moreover, protestant claims that the shaving operation, which was performed to exacting tolerances and in conformance with precise specifications, actually dedicated the leather to a particular end use, to the extent that it imparted a critical final characteristic to the leather; the leather could be used either in producing stout boot uppers, or thinner (and softer) sport shoes, fashion boots, or garments or accessories. Moreover, the wet blue leather which was shipped to Mexico could be made into a number of different products; it did not become dedicated for a particular end use until after the shaving process.

In the next operation, the shaved wet blue was used as input material in the retanning process. Protestant claims that the three "wet" operations which consisted of retanning (which introduced end-use properties such as softness and solidity), coloring (which provides pigmentation and resistance to fading and perspiration, etc.), and fatliquoring (which determines the ultimate degree of softness and flexibility), served vastly different purposes and, each operation, by itself, produced a number of distinct changes in the character of the material being processed. Protestant states that these three operations, however, were always performed together and generally were recognized within the industry as constituting a continuous process of sequential chemical treatments.

Retanning was the process by which certain leather end-use properties (such as softness, shading, solidity, and uniformity) were introduced and controlled by the tanner by selecting retanning agents mineral, or synthetic origin. Coloring, was the process of imparting a desired color, through the use of water soluble aniline dyes, which required an understanding of natural pigmentation and grain characteristics, as well as control of penetration. In addition, proper coloring techniques imparted necessary resistance to fading, perspiration, bleeding, dry cleaning and washing. Protestant states that the retanning and coloring operations irrevocably altered the character of the product. Fatliquoring, by which the fibers of the leather were lubricated with a combination of animal, vegetable, and mineral oils and related fatty substances, was the operation that determined the ultimate degree of softness and flexibility that the finished leather product would exhibit.

Following the wet operations, protestant states that the leather was set out (its moisture content is reduced and the grain is smoothed) and dried by one of a variety of methods, the choice of which would actually affect the commercial quantity of "yield" of the product. Setting out involved the removal of excess moisture. The blades of the setting machine did not cut, but they were designed to stretch the hide and smooth the grain, while compressing the material and squeezing out excess moisture. The effect of setting out resulted in (a) reducing moisture content to about 60 percent; (b) smoothing down the grain of the hide; and (c) compressing the leather fibers.

According to protestant, the Mexican process of conditioning or "staking" the dried leather was considered the most important operation, at least from the perspective of imparting to the leather its most distinctive, desirable; and readily recognizable characteristics of softness and flexibility. Staking was accomplished by means of a machine that subjected the leather to tremendous stresses by stretching, flexing, and striking the material with overlapping pins or fingers hundreds of times as it passes through the staking machine. Staking was the process by which crust leather is rendered "ready for use."

The final operation performed in Mexico was buffing, which is a leather working process that, in some instances, may have extremely significant and obvious effects upon the character of the material (i.e., destroying the smooth grain surface and replacing it with a sueded surface). In the instant case, the grain was buffed to smooth it and prepare it for finishing. After this operation, the tanned leather was then sent to the U.S. for further processing.

It is protestant's position that the first operation performed in Mexico, shaving the wet blue, resulted in a significant change in the character of the material and constituted a substantial transformation. Furthermore, protestant claims that the three "wet" operations which consisted of retanning, coloring, and fatliquoring imparted or determined critical end-use properties as softness, solidity, color and color fastness, and the ultimate degree of flexibility that the finished product would exhibit, thus resulting in a substantial transformation. Moreover, protestant states that drying also had commercial significance. Finally, protestant claims that the staking operation affected both the character (marketability) and use (utility), and the article that emerged—conditioned crust leather—could be viewed as a new and different article of commerce.

By letter dated April 29, 1994, protestant submitted additional information to support its position that unconditioned (*i.e.*, not staked) crust leather was a separate article of commerce from conditioned (*i.e.*, staked) leather. In this regard, protestant submitted a letter from Mr. Jose Manuel Irurita, President of Curtidos Temola, S.A. de C.V., one of Prime Tanning's suppliers of conditioned crust leather from Mexico. In the letter, Mr. Irurita confirms that in addition to providing staked crust leather to Prime Tanning, Curtidos Temola, "on a regular basis, * * * also supplied unconditioned crust leather—that is, leather that had been vacuum dried but not staked—" to one of Temola's regular customers that specified that the product be *unstaked* leather. As Mr. Irurita indicates, such material was used to upholster automobile interiors and furniture.

As Mr. Irurita further indicates in his letter, the "same unconditioned crust leather" could have been transformed, by staking, into a different product (*i.e.*, staked or conditioned crust leather) and provided to another customer "for use in the production of, for example, leather handbags." Thus, protestant claims that this letter not only confirms that both staked and unstaked leather are distinct articles of commerce, but that these two products have different end uses as well.

In addition, protestant provided in its April 29, 1994, submission an affidavit of Prime Tanning employee Mr. Bruce Macdonald, Regional Sales Manager. Mr. Macdonald's sworn statement describes and documents a series of transactions in which Prime Tanning acquired (from Curtidos Star, S.A. de C.V., another supplier of leather products from Mexico) unstaked crust leather which it sold to Swank, Inc., a domestic producer of personal leather goods and accessories. This affidavit also indicates that Star has engaged in trade involving both staked and unstaked crust leather. In addition, this affidavit stated that Swank is not Prime Tanning's only customer for unstaked crust leather. Mr. Macdonald stated that, on occasion, the same unstaked crust leather imported for sale to Swank was sold "as is" to Entreprises P. Boucher, a Canadian processor of distressed leather.

Based on this evidence, protestant claims that conditioned and unconditioned crust leather constitute separate and distinct articles of commerce. Protestant submits that there is documented trade in each such article, and it is the process of staking that converted (and therefore substantially transformed) one into the other, rendering conditioned crust leather suitable for uses distinct from those of unconditioned crust leather.

Issue:

Whether the operations performed in Mexico to the imported wet blue split leather result in a double substantial transformation, thereby enabling the cost or value of this material to be included in the GSP 35% value-content requirement.

Law and Analysis:

Under the GSP, eligible articles the growth, product, or manufacture of a designated beneficiary developing country (BDC), which are imported directly from a BDC into the U.S. qualify for duty-free treatment if the sum of 1) the cost or value of the materials produced in the BDC plus 2) the direct costs involved in processing the eligible article in the BDC is at least 35% of the article's appraised value at the time it is entered into the U.S. See 19 U.S.C. 2463.

Prior to January 1, 1994, under General Note 3(c)(ii)(A), Harmonized Tariff Schedule of the United States (HTSUS), Mexico was a designated BDC for purposes of the GSP. In addition, it appears based on your description of the merchandise that the article at issue is classified under subheading 4104.31.5010, HTSUS, which provides for "Other bovine leather and equine leather, parchment-dressed or prepared after tanning: Full grains and grain splits: Other: Upper leather; sole leather." Articles classified under this provision are eligible for duty-free treatment under the GSP provided the "product of", "imported directly" and 35% value-content requirements are satisfied.

Where an article is produced from materials imported into the BDC, as in this case, the article is considered to be a "product of" the BDC for purposes of the GSP only if those materials are substantially transformed into a new and different article of commerce. See 19 CFR 10.177(a)(2). The cost or value of materials which are imported into the BDC may be included in the 35% value-content computation only if the imported materials undergo a double substantial transformation in the BDC. That is, the non-Mexican components must be substantially transformed in Mexico into a new and different intermediate article of commerce, which is then used in Mexico in the production of the final imported article, the tanned leather. The intermediate article must be "readily susceptible of trade, and be an item that persons might well wish to buy and acquire for their own purposes of consumption or production." *Azteca Milling Co. v. United States* 703 F. Supp. 949 (CIT 1968), *aff'd*, 890 F.2d 1150 (Fed. Cir. 1989), citing, *Torrington Co. v. United States*, 8 CIT 150, 596 F. Supp. 1083 (1984), *aff'd*, 764 F.2d 1563 (Fed. Cir. 1985).

A substantial transformation occurs when a new and different article of commerce emerges from a process with a new name, character or use different from that possessed by the article prior to processing. *Texas Instruments, Inc. v. United States*, 69 CCPA 152, 681 F.2d 778 (1982).

In a case similar to the instant case, we held that refining leather from a coarse state to a more finished product for use in the footwear industry did not result in a substantial transformation of the imported leather into a "product of" the U.S. for purposes of U.S. Note 2(b), subchapter II, Chapter 98, HTSUS. See HRL 556242 dated October 2, 1991. In HRL 556242, the operations performed in the U.S. to the imported coarse leather consisted of: (1) retanning, (2) coloring, (3) fat liquoring, (4) drying, either by hanging or by vacuum, (5) dampening if vacuum drying is used, (6) dry milling by tumble drying for a softer feel, (7) toggling to stretch the hides back to yield size after shrinkage, (8) mechanical softening utilizing rollers and other machinery to further soften the leather, (9) embossing the leather with the desired print pattern, (10) painting the hides to the desired color, (11) sealing the top coat of the hide, (12) final embossing to correct any inconsistencies, (13) additional mechanical softening, (14) trimming of damaged pieces, (15) measuring and cutting hides to desired square foot, and (16) packaging. Operation numbers (1) through (8) are similar to those operations described in the instant case which occur in Mexico after the shaving operation.

In HRL 556242, we held that the crust leather and the finished leather constituted the same product at different stages of production; there was no transformation of a producer good to a consumer good. We further stated that the processing of the leather was cosmetic in nature, and did not constitute a change in the character and use of the imported leather. Therefore, we found that the crust leather imported into the U.S. did not undergo the requisite substantial transformation into a "product of" the U.S. for purposes of Note 2(b).

In HRL 556242, the imported product consisted of nonperishable crust leather, whereas, in the instant case, the crust leather has already undergone a pickling, chrome tanning and splitting operation in the U.S., prior to being imported into Mexico. Moreover, in the instant case, unlike in HRL 556242, the split wet blue leather undergoes a preliminary shaving operation in Mexico before undergoing the retanning, setting out, drying, conditioning, and staking operations. Also, the leather in the instant case undergoes a conditioning operation which introduces the specified degree of softness or temper required, depending upon the end use to which the finished product will be put. Thus, although some of the processing operations may be similar in both cases, the initial products as well as some of the processing steps in the production of the final article are different.

Accordingly, we find that the combination of all of the processing operations performed in Mexico on the imported wet blue split sides constitute a substantial transformation of the imported wet blue split leather into a new and different article having a new name, character and use. We are of the opinion that the shaving, retanning, fat liquoring, coloring, conditioning and staking process, convert the split wet blue from a product which is suitable for many uses into a product which is suitable for specific uses. The material which emerges after these processes has lost the identifying characteristics of its constituent material and possesses attributes such as softness or firmness and a desired color which are specifically applicable to given uses, and do not exist in the material exported to Mexico.

However, we do not find that a double substantial transformation results from the processing of the split wet blue leather, since these operations do not result in a new and different intermediate article of commerce which is then used in the production of the final article—conditioned staked leather. We find that the shaving and retanning operations do

not by themselves result in a new and different article of commerce, but are merely intermediate steps in the process advancing toward the finished staked leather.

Protestant claims in support of its position that a double substantial transformation has occurred in Mexico, that a change in tariff classification results when the wet blue product (subheading 4104.29.9040, HTSUS), is processed into the alleged intermediate article—the retanned upper leather (subheading 4104.29.5010, HTSUS), and then into the final article—the further prepared split upper leather (subheading 4104.31.5010, HTSUS). However, there is only one change in the Harmonized Tariff classification for this good. Moreover, the court has held that changes in tariff classification of a good although indicative, is not dispositive that a substantial transformation has occurred. See *Superior Wire v. United States*, 669 F. Supp. 472, 478 (CIT 1987).

Holding:

Based on the information submitted, we are of the opinion that the processing of the wet blue split leather in Mexico results in a single substantial transformation of the leather into a "product of" Mexico. However, as the processing does not result in the requisite double substantial transformation, the cost or value of the wet blue split leather may not be counted toward the GSP 35% value-content requirement. Accordingly, unless the value-content requirement can be met by the direct processing costs alone as set forth in section 10.178, Customs Regulations (19 CFR 10.178), this protest should be denied in full.

In accordance with Section 3A(11)(b) of Customs Directive 099 3550-065, dated August 4, 1993, Subject: Revised Protest Directive, this decision together with the Customs Form 19, should be mailed by your office to the protestant no later than 60 days from the date of this letter. Any reliquidation of the entry in accordance with the decision must be accomplished prior to mailing of the decision. Sixty days from the date of the decision the Office of Regulations and Rulings will take steps to make the decision available to Customs personnel via the Customs Rulings Module in ACS and the public via the Diskette Subscription Service, Freedom of Information Act and other public access channels.

SANDRA L. GETHERS,
(for John Durant, Director,
Commercial Rulings Division.)

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2 RR:TC:SM 559969 MLR
Category: Classification

FREDERICK L. IKENSON, ESQ.
LARRY HAMPEL, ESQ.
JOSEPH A. PERNA, V. ESQ.
1621 New Hampshire Avenue, N.W.
Washington, DC 20009

Re: Eligibility of footwear uppers from the Dominican Republic for duty-free treatment under U.S. Note 2), Subchapter II, Chapter 98, HTSUS; wet blue leather; shaving; retanning; coloring; buffing; Mexico; HRL 556242.

DEAR MESSRS. IKENSON, HAMPEL AND PERNA:

This is in response to your letter of July 16, 1996, on behalf of Prime Tanning Co., Inc. ("Prime Tanning"), regarding the applicability of duty-free treatment for certain footwear, pursuant to Section 222 of the Customs Trade Act of 1990 (Public Law 101-382), which amended U.S. Note 2, Subchapter II, Chapter 98, Harmonized Tariff Schedule of the United States (HTSUS), {hereinafter "Note 2(b)"} . A meeting was held at the Office of Regulations & Rulings on October 17, 1996, and additional information was submitted on October 18, 1996, and November 19, 1996.

Facts:

The articles at issue are finished leathers and the footwear manufactured therefrom. It is stated that wet blue leather produced in the U.S. by Prime Tanning is shipped to a tan-

nery in Mexico for processing into finished leather. Prior to exportation to Mexico, it is stated that the processes performed in the U.S. involve salting, bating, and pickling (by chrome tanning), which converts the hide into wet blue leather. The wet blue leather is then split and exported to Mexico. It is stated that the finished leathers, exported from Mexico to the U.S., vary according to quality, type, color, and various other characteristics. However, generally, in Mexico, the first operation performed to the wet blue leather is shaving which imparts a uniform dimensional thickness, determined by the use of the finished leather. The next series of operations are retanning, coloring, and fatliquoring which together affect softness and flexibility, control solidity, provide pigmentation and resistance to fading and perspiration. The leather is then set out and dried by one of a variety of methods, either hanging, vacuum drying, or most commonly pasting. Next, the leather is conditioned, either by staking or milling, which imparts the degree of softness and flexibility that the fatliquoring prepared the leather to accept. The operation of the staking machine, used on heavier material, is also described as stretching, flexing, and striking the leather with numerous mechanical fingers. The milling machine, used for thinner and softer lots, is similar to a rotating drum where the leather is simply tumbled. The next operation, performed as needed, is stated to be buffing which may be used to minimize variations in the surface of the grain. Last, the leather is finished which may entail plating, a high pressure and temperature ironing process that makes the finished grain surface smoother or embosses varied grain textures. At a minimum, the finishing involves the application of surface treatments that provide resistance to stains and abrasions.

It is stated that the finished leather is then shipped from Mexico f.o.b. Laredo Texas, generally in lots consisting of 20 to 24 pallets. The leather is unladen from the importing carrier and then stored in a commercial warehouse facility. It is then stated that subject to Prime Tanning's direction, each bundled group of finished sides will be physically inspected to confirm that the product shipped to and received at the U.S. facilities conforms to that character of product ordered and the quantity of product allegedly shipped. If the results of such inspection are satisfactory, an approval label or acceptance sticker will be affixed to each bundle that passes this inspection in order to signify the commercial acceptability of the product as delivered. It is also stated that the leather is sold by Prime Tanning to an unrelated footwear producer, and that a new bill of lading is drafted for the shipment from the U.S. to the Dominican Republic. Prime Tanning may also arrange for shipment of the leather from Laredo to Jacksonville, Florida, and from Jacksonville to a consignee in the Dominican Republic.

In the Dominican Republic, it is stated that the leather, together with other U.S. materials which were exported directly from the U.S., are used to produce footwear. It is then stated that the finished footwear is imported directly into the U.S.

Issue:

Whether the leather footwear produced in the Dominican Republic is eligible for duty-free treatment under Note 2(b).

Law and Analysis:

Section 222 of the Customs and Trade Act of 1990 (Pubic Law 101-382) amended U.S. Note 2, Subchapter II, Chapter 98, HTSUS, to provide for the duty-free treatment of articles (other than textile and apparel articles, and petroleum and petroleum products) which are assembled or processed in a Caribbean Basin Economic Recovery Act (CBERA) beneficiary country (BC) wholly of fabricated components or ingredients (except water) of U.S. origin.

Note 2(b) provides as follows:

(b) No article (except a textile article, apparel article, or petroleum, or any product derived from petroleum, provided for in heading 2709 or 2710) may be treated as a foreign article, or as subject to duty, if—

(i) the article is—

(A) assembled or processed in whole of fabricated components that are a product of the United States, or

(B) processed in whole of ingredients (other than water) that are a product of the United States, in a beneficiary country; and

(ii) neither the fabricated components, materials or ingredients, after exportation from the United States, nor the article itself before importation into the United States, enters the commerce of any foreign country other than a beneficiary country.

To qualify for Note 2(b) duty-free treatment, an eligible article must be assembled or processed in a BC entirely of components or ingredients that are a "product of" the U.S. As used in this paragraph, the term "beneficiary country" means a country listed in General note 7(a), HTSUS, which includes the Dominican Republic. We have also previously held that footwear and parts of footwear are not textile and apparel articles for purposes of Note 2(b), regardless of whether they are subject to textile agreements. See T.D. 91-88, 25 Cust. Bull. 45 (1991).

The first question which must be resolved is whether the leather shipped from Mexico to the U.S. is still considered a "product of" the U.S. As support that the leather returned to the U.S. is still considered a product of the U.S., you cite the *Rules for Determining the Country of origin of a Good for Purposes of Annex 311 of the North American Free Trade Agreement*, 61 FR 28932 (June 6, 1996). However, as indicated in 19 CFR 102.0, the rules set forth in Part 102 are only used for certain and these purposes do not include whether a good is a "product of" the U.S. for purposes of Note 2(b) duty-free treatment. The final rule published on June 6, 1996, specifically did not include the changes in 59 FR 141 (January 3, 1994), and 60 FR 22312 (May 5, 1995), which proposed the use of 19 CFR Part 102 "for purposes of the Customs and related laws and the navigation laws of the United States." See 60 FR 22312.

Accordingly, in order to determine whether the leather shipped from Mexico to the U.S. is still considered a "product of" the U.S., we must apply the substantial transformation test. A substantial transformation occurs when a new and different article of commerce emerges from a process with a new name, character or use different from that possessed by the article prior to processing. *Texas Instruments, Inc. v. United States*, 69 C.C.P.A. 152, 681 F.2d 778 (1982).

In Headquarters Ruling Letter (HRL) 556242 dated October 2, 1991, Customs considered, for purposes of Note 2(b), "non-perishable crust leather" which was imported into the U.S. from several South American countries. The operations performed in the U.S. included among the following operations:

1. retanning the crust for more consistent texture;
2. coloring the crust based on the desired finished color;
3. fat liquoring or oiling to change the texture of the leather;
4. drying;
5. dampening if vacuum drying was used;
6. dry milling by tumble drying for a softer feel;
7. toggling to stretch the hides back to yield size after shrinkage;
8. mechanical softening to further soften the leather;
9. embossing the leather with the desired print pattern;
10. painting to desired color; and
11. sealing and trimming.

It was held that the material imported into the U.S. did not undergo a substantial transformation by the operations performed in the U.S. as the operations were cosmetic in nature and the crust leather and the finished leather were the same product at different stages of production.

However, in HRL 557714 dated September 9, 1994, Customs considered "wet blue leather" shipped by Prime Tanning to Mexico, where it was:

1. shaved to level the thickness of the wet blue split to the exact specifications needed by leather goods makers for the production of a given end product;
2. retanned to impart softness and solidity;
3. colored to provide pigmentation and resistance to fading;
4. fatliquored to soften and impart flexibility;
5. set out and dried;
6. conditioned, also known as "staking", to stretch the leather; and
7. buffed.

It was held that, consistent with HRL 556242, the combination of the processes performed in Mexico on the wet blue split sides constituted a substantial transformation of the wet blue split leather into a new and different article having a new name, character and use. It was stated that the shaving, retanning, fat liquoring, coloring, conditioning and staking process, converted the split wet blue from a product which was suitable for many uses into a product which was suitable for specific uses. Therefore, for purposes of the Generalized System of Preferences, the imported tanned leather was considered to be a "product of" Mexico. However, it was also stated that the shaving and retanning operations did not by

themselves result in a new and different article of commerce, but were merely intermediate steps in the process advancing toward the finished staked leather.

In HRL 557714, the exported material was chrome-tanned wet blue leather which is created as a result of a tanning process. "Tanning" is the process used to convert hides into a stable, non-putrescible material, and is foremostly performed using a method called chrome tanning which imparts a blue-green color to the hides. See *Leather Facts* 15 (New England Tanners Club 2d ed. 1983). Tanning is also stated to be the final process in turning hides and skins into finished leather. See *Compton's Encyclopedia* (1992-1995). The first two steps stated to be performed in HRL 557714 were "shaving" and then "retanning", whereas in HRL 556242, the initial material considered was "nonperishable crust leather" and the first step performed was "retanning". We note that since the material in HRL 556242 was stated to be non-perishable, pursuant to the definition above, the material had already undergone a tanning procedure, imparting the blue-green color, prior to importation into the U.S. Consequently, the starting material in HRL 556242, described as "non-perishable crust leather" is the same as the starting material described in HRL 557714 as "wet blue leather".

Other operations performed before "retanning" are "wringing and sorting" and "splitting and shaving". See *Leather Facts*, *supra*, at 17. "Splitting involves feeding the material through a machine with the grain side up to cut off the bottom flesh layer, called a "split". "Shaving" is used to level the overall hide thickness to exact specifications. *Id.* at 18-19. After splitting and shaving, the material may then be retanned, colored, and fatliquored. *Id.* In HRL 557714, it is clear that the splitting occurred prior to exportation to Mexico, and the shaving occurred in Mexico. While it is not apparent from HRL 556242, the ruling request in that case indicates that prior to retanning, the material was subjected to "buffing the flesh side before retan", which appears to be similar to splitting.

Next, the processes described in both HRL 557714 and 556242 involve retanning, coloring, fatliquoring, and drying. HRL 556242 then refers to dampening, dry milling, toggling, and mechanical softening, whereas HRL 557714 refers to conditioning and staking. "Conditioning" involves introducing small amount of moisture to increase the material's workability, but the material may also be used as is for some applications. *Id.* at 21. Therefore, "conditioning" appears to be similar to the "dampening" process described in HRL 556242. "Staking" involves mechanically softening the leather to make it pliable by pounding the leather with pins, and "dry milling" is one type of mechanical softening process. *Id.* at 22. Therefore, it appears that the "dry milling, toggling, and mechanical softening" processes described in HRL 556242 are akin to the "staking" operation performed in HRL 557714.

In consideration of the foregoing, it is our opinion that despite the differences in nomenclature used in these rulings, the materials involved and operations performed both in HRL 556242 and HRL 557714 were actually so similar that any conclusion regarding a substantial transformation of the materials involved should also be the same. The primary difference appears to be whether a splitting and/or shaving process occurred in HRL 556242. However, as it was stated in HRL 557714, shaving alone is merely an intermediate process, and alone is not considered a substantial transformation, and in HRL 556242 there were additional finishing operations not performed in HRL 557714. Furthermore, the initial tanning process, as opposed to "retanning" is actually the final process to convert hide or skin into finished leather. It is, therefore, our opinion that the processes performed in Mexico in HRL 557714 actually did not result in a substantial transformation, as the exported article, wet blue, is actually leather, and the additional operations performed to make conditioned crust leather are only finishing operations similar to those involved in HRL 556242. Accordingly, our decision in HRL 557714 is hereby revoked.

Therefore, pursuant to HRL 556242, we find that the operations performed in this case in Mexico similarly do not result in a substantial transformation of the wet blue leather exported from the U.S. Accordingly, we find that the leather imported into the U.S. may be considered a "product of" the U.S. for purposes of Note 2(b).

The second question which must be resolved is whether the direct shipment requirements are satisfied, especially whether the leather is exported directly from the U.S. to the Dominican Republic. It is stated that the leather processed in Mexico is shipped to the U.S., unladen from the importing carrier, placed in a commercial warehouse facility, and each bundled group of finished sides will be physically inspected subject to Prime Tanning's direction to confirm that the product shipped to and received at the U.S. facilities conforms to that character of product ordered and the quantity of product allegedly shipped. If the results of such inspection are satisfactory, that an approval label or acceptance sticker will be

affixed to each bundle that passes this inspection, in order to signify the commercial acceptability of the product as delivered. It is also stated that the leather is sold by Prime Tanning to a footwear producer, and that the leather is shipped from Mexico f.o.b. Laredo, Texas, and a new bill of lading is drafted for the shipment from the U.S. to the Dominican Republic.

For purposes of Note 2(b), there are no regulations defining the direct shipment requirements. However, Customs has interpreted the direct shipment requirements similarly for purposes of the United States-Israel Free Trade Implementation Act of 1935 (Israel FTA), Generalized System of Preferences (GSP), and Caribbean Basin Economic Recovery Act (CBERA). See Annex 3, paragraph 3 of the Israel FTA; 19 CFR 10.175; and 10.193. It is your contention that the leather is shipped directly from the U.S. to the Dominican Republic as it is subjected to inspection and is sold in the U.S. to an unrelated party who ships the leather to the Dominican Republic. You have cited HRL 071575 dated November 20, 1984, where Customs stated that it has taken the position that, for purposes of the GSP, merchandise is deemed to have entered the commerce of an intermediate country if manipulated (other than loading or unloading), offered for sale (whether or not a sale actually takes place), or subjected to a title change in the country. However, HRL 071575 only held that toys produced in Macau and shipped to Hong Kong, where they were placed in a warehouse for approximately six months and not sold, repackaged or handled in any other way, did not enter into the commerce of Hong Kong. Furthermore, in HRL 555398 dated December 12, 1989, Customs determined that pepper from a beneficiary developing country (BDC) shipped to a non-BDC for processing into oleoresin and returned to the BDC, but not removed from the vessel once laden in the non-BDC until the vessel reached the U.S., was not imported directly for purposes of the GSP. In HRL 555398, it was mentioned that the direct shipment requirement may act to reduce the possibility that materials or articles of non-GSP countries will be commingled or mixed with GSP eligible articles.

However, in HRL 557149 dated November 22, 1993, Customs held that Israeli-origin garments assembled in China and shipped back to Israel for sampling and inspection were considered to be "imported directly" from Israel into the U.S. provided a statement was included on each invoice that the merchandise covered by the invoice was inspected pursuant to Military Standard 105-D, a commercially recognized statistical sampling procedure. See also HRL 557647 dated July 14, 1994.

In this case, the leather will be inspected to ensure that the leather ordered is what is received at the U.S. facilities, and similar to HRL 557149 where a statement was provided on the invoice, the leather will be labeled to verify that it was inspected. We find that such all inspection, along with the sale to an unrelated footwear producer and new bill of lading, will satisfy the direct shipment requirements that the leather be directly shipped from the U.S. to the Dominican Republic.

While you have not provided extensive details regarding the operations performed in the Dominican Republic, although Note 2(b)(i)(A) and (B) are separated by the word "or", Customs has stated that it believed Congress did not intend to preclude free treatment under this provision to an article which is created in a BC both by assembling and processing U.S. fabricated components and by processing U.S. ingredients. Therefore, in this case, provided all of the other materials are of U.S.-origin, all materials are shipped directly from the U.S. to the Dominican Republic, and the completed footwear is shipped directly to the U.S. without entering into the commerce of any foreign country other than a BC, the footwear will be entitled to duty-free treatment under Note 2(b), assuming all documentation requirements of Headquarters telex 9264071 dated September 28, 1990, are satisfied.

Holding:

Based upon the information provided, the leather returned from Mexico to the U.S. may be considered a "product of" the U.S. for purposes of Note 2). Furthermore, provided the leather is used with other materials entirely of U.S. origin to make footwear in the Dominican Republic, the footwear may enter the U.S. duty-free pursuant to Note 2(b), provided the direct shipment requirements and the documentation requirements set forth in Headquarters telex 9264071 dated September 28, 1990, are satisfied.

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is entered. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer.

JOHN DURANT,
Director,

Tariff Classification Appeals Division.

United States Court of International Trade

One Federal Plaza
New York, N.Y. 10007

Chief Judge
Gregory W. Carman

Judges

Jane A. Restani
Thomas J. Aquilino, Jr.
R. Kenton Musgrave

Richard W. Goldberg
Donald C. Pogue
Evan J. Wallach

Senior Judges

James L. Watson
Herbert N. Maletz
Bernard Newman
Dominick L. DiCarlo
Nicholas Tsoucalas

Clerk

Raymond F. Burghardt

THE HISTORY OF THE
CITY OF BOSTON

FROM 1630 TO 1830

BY

JOSEPH NEASE

OF BOSTON

AND

JOHN W. LATHROP

OF BOSTON

AND

JOHN W. LATHROP

OF BOSTON

AND

JOHN W. LATHROP

OF BOSTON

AND

JOHN W. LATHROP

OF BOSTON

AND

JOHN W. LATHROP

OF BOSTON

AND

JOHN W. LATHROP

OF BOSTON

AND

JOHN W. LATHROP

OF BOSTON

AND

JOHN W. LATHROP

OF BOSTON

Decisions of the United States Court of International Trade

(Slip Op. 96-189)

JEWELPAK CORP., PLAINTIFF *v.* UNITED STATES, DEFENDANT

Court No. 94-04-00230

[Plaintiff's motion for summary judgment denied. Defendant's motion for partial summary judgment granted.]

(Decided November 27, 1996)

Fitch, King and Caffentzis, (Peter J. Fitch, James Caffentzis) for plaintiff.

Frank W. Hunger, Assistant Attorney General; Joseph I. Liebman, Attorney-in-Charge, International Trade Field Office, Commercial Litigation Branch, Civil Division, United States Department of Justice (Barbara Silver Williams); United States Customs Service (Chi Choy), of Counsel, for defendant.

I

INTRODUCTION

WALLACH, *Judge*: Plaintiff, Jewelpak Corporation ("Jewelpak"), claims that the United States' Customs Service ("Customs") changed its position in connection with the classification of "presentation boxes",¹ and that the Court should declare the change invalid for failure to publish notice in the Federal Register.² Plaintiff also says Customs changed the classification of the boxes based on an amendment to the Explanatory Notes to the Harmonized System. It argues that without action by the International Trade Commission ("ITC") and the President to amend the Harmonized Tariff Schedule of the United States ("HTSUS"), that change would be improper.

Plaintiff moved for summary judgment on its second and third causes of action. Defendant cross-moved on those causes. Plaintiff's motion is

¹ Presentation boxes are used to display and transport jewelry, such as rings, bracelets, necklaces, and watches, or other non-jewelry items. The boxes are either plastic or metal, and are covered with either textile materials or plastic sheeting. They are given free to purchasers of jewelry.

² Customs classified the presentation boxes as "jewelry boxes" under subheading 4202.92.90, HTSUS, with a 20 percent *ad valorem* duty rate. Plaintiff claims in its first cause of action that its merchandise is not properly considered "jewelry boxes". The Court will enter a scheduling order for the first cause of action after it decides these dispositive motions.

denied and Defendant's granted. The Court finds Customs had no "position" regarding classification of the presentation boxes which would require publication of notice in the Federal Register before reclassification. It also finds Customs properly considered the amended Explanatory Note in reclassifying the presentation boxes, and did not need action by the ITC or the President. Jurisdiction is proper under 28 U.S.C. § 1581(a).

II

BACKGROUND

It is uncontested that under the Tariff Schedules of the United States ("TSUS"), the boxes were classified according to their component of chief value. Plaintiff's Mem. In Support Of Its Motion For Summary Judgment at 7 ("Motion"); Defendant's Cross-Motion for Partial Summary Judgment at 1 ("Cross-Motion"). Upon enactment of the HTSUS, effective January 1, 1989, they were classified according to the constituent material that gave them their essential character, under to General Rule of Interpretation 3(b). HRL 951028, Mar. 3, 1993, *see* Ex. 7 to Motion.

Even before the HTSUS was enacted, however, the Harmonized System Committee ("HSC") considered amending the Explanatory Notes to the Harmonized Tariff System ("HTS") to include a description of "jewelry boxes". Initially, the HSC proposed a modification to provide that:

The term "jewellery boxes" covers not only boxes specially designed for keeping jewellery, but also small, lidded containers (with or without hinges) of the type in which individual articles of jewellery are normally sold.

Amendment of Heading 42.02 to Provide for the Inclusion of Articles Wholly or Mainly Covered with Paper (Amendment of Heading 42.02), HSC, 2nd Sess., Aug. 1, 1988, Doc. 34.701 E, Annex IJ/2, *see* Ex. A to Cross-Motion. The United States opposed that language and urged reconsideration. It expressed its concern that the amendment would subject some presentation boxes to textile import restraints. *Amendment of Heading 42.02*, HSC, 3rd Sess., Apr. 3, 1989, Doc. 35.327 E, *see* Ex. 11 to Motion. Eventually, the amendment to the Explanatory Note, effective on January 1, 1990, read:

The term "jewellery boxes" covers not only boxes specially designed for keeping jewellery, but also similar lidded containers of various dimensions (with or without hinges or fasteners) specially shaped or fitted to contain one or more pieces of jewellery and normally lined with textile material, of the type in which articles of jewellery are presented and sold and which are suitable for long-term use.

Amended Explanatory Note to Heading 42.02.

Customs relied, *inter alia*, upon the amended Explanatory Note, and found that because the merchandise was not "suitable for long-term

use", it fell outside the definition of "jewelry boxes" in Heading 4202, HTSUS.³

In 1992, Customs notified Jewelpak that it was considering revoking HRLs 086186 and 089830, and requested comments. Letter of Jan. 27, 1992, *see* Ex. 10 to Motion. Jewelpak opposed revocation of the rulings. *See* HRL 951028. In revoking HRLs 086186 and 089830, Customs said the Explanatory Notes are "relevant as a guideline in determining the scope of a heading," HRL 951028 at 3, determined that the merchandise was capable of long-term use, and classified it under Heading 4202, HTSUS. *Id.*

III

DISCUSSION

A

SUMMARY JUDGMENT IS APPROPRIATE BECAUSE THERE IS NO GENUINE ISSUE AS TO ANY MATERIAL FACT AND THE GOVERNMENT IS ENTITLED TO JUDGMENT AS A MATTER OF LAW

This Court may grant a motion for summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." USCIT R. 56(d).

The parties agreed at oral argument that there is a genuine issue of material fact which precludes summary judgment on the first cause of action. Discovery was stayed with regard to this action pending the adjudication of the second and third causes of action. As a result, it is not practicable nor possible pursuant to USCIT R. 56(e) for the Court to ascertain whether material facts are controverted in the first cause of action. However, the Court finds that there are no genuine issues as to any material fact in the second and third causes of action, and that the Government is entitled to partial summary judgment as a matter of law.⁴

B

THE CUSTOMS SERVICE WAS NOT REQUIRED TO PUBLISH NOTICE IN THE FEDERAL REGISTER OF ITS INTENT TO CLASSIFY THE PRESENTATION BOXES UNDER A DIFFERENT PROVISION OF THE HTSUS

Jewelpak claims that Customs had an official "position" regarding the classification of the presentation boxes. According to Jewelpak, Customs violated 19 C.F.R. § 177.10(c)(2) when it failed to follow proper notice and comment procedures before revoking HRLs 086186 and 089830. For the reasons that follow, Jewelpak's arguments fail.

Congress requires that imported merchandise be correctly classified in a uniform manner. *See* 19 U.S.C. § 1502(a). Customs has implemented

³ Customs subsequently classified most containers similar to the subject merchandise as "jewelry boxes" under Heading 4202. Headquarter Ruling Letter ("HRL") 951028, Mar. 3, 1993, *see* Ex. 7 to Motion. However, in HRLs 086186 (January 2, 1990) and 089830 (July 26, 1991), issued to Jewelpak, Customs classified boxes, identical to those here, using the essential character test.

⁴ The presumption of correctness, found in 28 U.S.C. § 2639(a)(1), applies to Customs' factual determinations only. *Goodman Mfg., L.P. v. United States*, 69 F.3d 505, 508 (Fed. Cir. 1995).

regulations to ensure uniform classification by establishing official classification "positions". They let interested parties comment when Customs is considering changing a position if the result will be a restriction or prohibition. Customs' regulation provides that:

Before the publication of a ruling which has the effect of changing a position of the Customs Service and which results in a restriction or prohibition, notice that the position (or prior ruling on which the position is based) is under review will be published in the FEDERAL REGISTER and interested parties given an opportunity to make written submissions with respect to the correctness of the contemplated change * * *.

19 C.F.R. § 177.10(c)(2). Thus, to require Customs to publish notice, Plaintiff must demonstrate 1) that Customs had a position on the subject merchandise, and 2) that a change would result in a restriction or prohibition.

1

CUSTOMS DID NOT HAVE A "POSITION" REGARDING THE
CLASSIFICATION OF THE PRESENTATION BOXES

Plaintiff argues Customs had a "position" regarding classification of the presentation boxes, and that publication of notice was required before any change in classification would be effective. Plaintiff says Customs' position was that the boxes should be classified by their essential character, and not as "jewelry boxes" within the meaning of Heading 4202.

According to Plaintiff, Customs' "position" is found in a March 13, 1989 memorandum from the Director, Commercial Rulings Division, Office of Regulations and Rulings ("Director's Memorandum"), disseminated through the Customs Information Exchange ("CIE") to the various ports in June, 1989. Ex. 8 to Motion. The memorandum discussed the consequences of amending the Explanatory Note's definition of "jewelry boxes", and stated " * * * this decision [to continue to classify in chapter 39, 73, or 48 using the essential character test] does not represent a change in the current Customs position * * *." *Id.* at 2. As further support for its "position" argument, Plaintiff points to HRL 086186 of Jan. 2, 1990, and HRL 089830 of Jan. 26, 1991, in which Customs classified its boxes under Plaintiff's claimed provisions after it determined essential character based on component materials.

Plaintiff also cites *Hemscheidt Corp. v. United States*, 72 F.3d 868 (Fed. Cir. 1995), arguing by analogy to *Hemscheidt* that the classification of the presentation boxes was subject to a "uniform and established practice" ("UEP") by Customs. In *Hemscheidt*, the Court of Appeals for the Federal Circuit ("CAFC") interpreted 19 U.S.C. § 1315(d) which provides in part:

No administrative ruling resulting in the imposition of a higher rate of duty or charge than the Secretary of the Treasury shall find to have been applicable to imported merchandise under an established and uniform practice shall be effective with respect to ar-

ticles entered for consumption or withdrawn from warehouse for consumption prior to the expiration of thirty days after the date of publication in the Federal Register of notice of such ruling * * *.

19 U.S.C. § 1315(d).

The CAFC interpreted the provision as barring the levy and collection of increases in duties in cases where an established and uniform practice exists concerning the rate of duty, unless an administrative ruling mandates the higher rate, notice of which is given in accordance with the statute. *Hemscheidt*, 72 F.3d at 870. There, both parties agreed an established and uniform classification practice had existed under the TSUS. *Id.* The CAFC held that "[r]eclassifications under the HTSUS that nullify established and uniform TSUS classifications are subject to the notice requirements of section 1315(d), unless the reclassification is itself compelled by the terms of the HTSUS statute." *Id.* at 872.

The Court rejects Plaintiff's *Hemscheidt* argument. Plaintiff has failed to meet the stringent requirements for establishing a UEP. Although under the TSUS Plaintiff's presentation boxes were classified as "retail packaging", since 1990 Customs consistently classified merchandise similar to the subject merchandise under Heading 4202 as "jewelry boxes", with few exceptions.⁵ Establishment of a "position" within the meaning of 19 C.F.R. 177.10(c)(2) has stringent notice requirements, set forth *supra* at page 5. Since Customs had no "position" regarding the presentation boxes, publication of notice was not required.⁶

Thus, in *Superior Wire v. United States*, 7 Fed. Cir. (T) 43, 867 F.2d 1409 (1989), the CAFC rejected an argument that a letter ruling, available to the public on microfiche but not published in the Customs Bulletin, constituted a "position" changeable only after notice in the Federal Register and public comment. *Id.* at 46-47, 867 F.2d at 1413.

In *Arbor Foods, Inc. v. United States*, 9 CIT 119, 607 F. Supp. 1474 (1985), this Court stated that:

Customs' establishment of a "position" would be along the same lines as that of an "established and uniform practice" under 19 U.S.C. § 1315(d) (1982). In that respect, such a "position" or "practice" would require uniform liquidations among the many ports over a period of time.

Id. at 123, 607 F. Supp. at 1478. See also *Nat'l Juice Prods. Assoc. v. United States*, 10 CIT 48, 628 F. Supp. 978 (1986) ("*National Juice*") (finding that a "position" did exist because Customs published several rulings in the Customs Bulletin that supplied a factually explicit description of a position in effect for at least eight years.).

In addition, Customs claims that "[u]ntil recently, the Customs Service had no established practice or position regarding the classification of such merchandise." Letter from Harvey B. Fox, Director of the

⁵ See Ex. E to Cross-Motion (containing HRL 086393, HRL 087787, NYRL 859318, NYRL 862417, NYRL 863339, HRL 088571, HRL 950703, NYRL 859141, and NYRL 862128).

⁶ Plaintiff did not cite to any location in the Customs Bulletin where Customs published a ruling concerning its "position" on the classification of the presentation boxes.

Office of Regulations and Rulings, June 22, 1993, at 1, Ex. F to Cross-Motion (emphasis added). No cognizable evidence submitted by Plaintiff refutes that position.⁷

Finally, before the ITC, Jewelpak admitted that "[i]n 1991, classification in regard to such containers may have varied * * *." Post Hearing Brief on Behalf of Jewelpak Corp. before ITC, Invest. no. 1205-3 at 4, Ex. G to Cross-Motion. In view of the substantial proof which must be shown before a "position" exists within the meaning of 19 C.F.R. §177.10(c)(2), see *Arbor Foods, supra*, Plaintiff's argument fails.

2

THERE WAS NO CHANGE OF POSITION AS DEFINED BY 19 C.F.R. § 177.10(c)(2)

Customs' issuance of HRL 951028 did not change a position within the meaning of 19 C.F.R. § 177.10(c)(2). Customs used the same legal test for classifying the merchandise in HRL 951028 and the two revoked headquarter's rulings. All three examined the merchandise to determine whether it was suitable for long term use. The only "change" that occurred was Customs' factual determination that the merchandise was suitable for long term use.

Customs has the authority to reach a different factual conclusion concerning the presentation boxes. Customs' regulations provide that:

Any ruling letter found to be in error or not in accordance with the current views of the Customs Service may be modified or revoked. Modification or revocation of a ruling letter shall be effected by Customs Headquarters by giving notice to the person to whom the ruling letter was addressed * * *.

19 C.F.R. § 177.9(d)(1).

In addition, it has been recognized that:

* * * there is no rule of administrative stare decisis. Agency practice, once established, is not frozen in perpetuity. Agencies frequently adopt one interpretation of a statute and then, years later, adopt a different view. As long as the new interpretation is consistent with congressional intent, an agency may make a "course correction."

Toyota Motor Sales, U.S.A., Inc. v. United States, 7 CIT 178, 192-93, 585 F. Supp. 649, 661 (1984) (citations omitted), *aff'd based upon the opinion below*, 753 F.2d 1061, 3 Fed. Cir. (T) 93 (1985).

Customs was free, upon consideration, to alter its classification. Customs complied with its regulations and gave notice to Jewelpak, as the

⁷ Plaintiff's reliance on the Director's Memorandum is misplaced. Defendant points out that the CIE provided the Secretary of the Treasury with a way of:

collecting, and distributing from a common center, data concerning values and advisory classifications, and such other information as will assist customs officers in the performance of their duties; such data shall be construed as advisory only, and not controlling by customs officers, in the appraisal and classification of merchandise.

TD. 43246, at 402 (March 3, 1929) (emphasis added).

In view of this purpose, the Court agrees with Defendant's conclusion that the "CIE memoranda do not create a Customs 'position,' much less, one that should be relied upon by the public for purposes of 19 C.F.R. §177.10(c)(2)." Cross-Motion at 13.

"person to whom the ruling letters [were] addressed", that Customs was considering revocation of the HRLs. This case is simply a revocation of an HRL by Customs.

3

THE MERCHANDISE WAS NOT SUBJECTED TO ANY RESTRICTIONS

As stated above, notice must be published in the Federal Register when Customs has a classification position and is considering changing it in a way that will subject the article to a restriction or prohibition. 19 C.F.R. § 177.10(c)(2). Even if a position had existed, Plaintiff has not demonstrated that Customs' classification of the presentation boxes in Heading 4202 resulted in a restriction or prohibition.

Plaintiff attempted to prove that a restriction or prohibition would result from the change in classification by citing the Director's Memorandum that stated: "classification of these containers as jewelry boxes in heading 4202 would have severe consequences on the administration of quota restraint agreements * * *." Ex. 8 to Motion at 2.

Plaintiff does not, however, contravene⁸ Customs' statement that:

[i]n order to prevent these [presentation] boxes from being subject to import quotas, quantitative restraints, or other similar import restraints if classified under 4202.92.90, HTSUS, the Committee for the Implementation of Textile Agreements made visa waivers available to importers, until the statistical breakdowns under heading 4202, HTSUS, became effective [to remove the subject merchandise from any textile restraints].

Cribb's Supp. Declaration at ¶4, attached to Defendant's Mem. in Reply to Plaintiff's Oppos. To Cross-Motion; see Affidavit of Peter Fitch, Exh. 14 to Plaintiff's Reply to Cross Motion ("Plaintiff's Reply") (admitting that waivers of the textile restraint requirements were obtained).⁹ Thus, any change of position would not have resulted in a restriction or prohibition so that Customs was not required to publish notice in the Federal Register.

4

PLAINTIFF HAS SHOWN NO PREJUDICE AS A RESULT OF THE FAILURE OF CUSTOMS TO PUBLISH NOTICE IN THE FEDERAL REGISTER

Even if Customs were required to publish a notice in the Federal Register, because Jewelpak can demonstrate no prejudice, it cannot rely on 19 C.F.R. § 177.10(c)(2). As said in *National Juice*:

Although defendant failed to publish the required notice of its change in position, this omission will only affect the ruling if it re-

⁸ USCIT R. 56(e) allows the Court to ascertain what material facts are actually and in good faith controverted when a case is not fully adjudicated on motion. If the Court had found that Plaintiff contravened Defendant's representation concerning the restrictions applicable to the presentation boxes, it would have directed further proceedings on this issue. However, the Court finds that Plaintiff has not presented evidence that made a prima facie showing that there was a restriction applied to the boxes, and in the absence of such evidence, this argument fails. Defendant has presented evidence that there was no restriction, and Plaintiff has failed to controvert that evidence. Therefore, the Court concludes that there is no genuine issue of material fact in dispute with regard to this issue.

⁹ To the extent that Plaintiff is arguing that the Government is estopped from changing its position, the Court notes that the doctrine of equitable estoppel is not generally available against the government. See generally *Old Republic Ins. Co. v. United States*, 10 CIT 589, 591-93, 645 F. Supp. 943, 945-47 (1986) (discussing the doctrine of equitable estoppel). If the Court had found a UEP regarding the classification of the boxes, the Government would have in effect been estopped from changing the classification until notice had been published in accordance with 19 U.S.C. § 1315(d).

sults in prejudice to the plaintiff * * *. Plaintiffs [in this case] are not prejudiced by the failure to publish notice as to this issue because, as is obvious, plaintiffs fully participated in the administrative process. Furthermore, comments from the public at large cannot change the essentially legally correct result.

10 CIT at 65-66, 628 F. Supp. at 994. See also *Lois Jeans & Jackets, U.S.A., Inc. v. United States*, 5 CIT 238, 243, 566 F. Supp. 1523, 1527-28 (1983) ("non-prejudicial procedural defects in agency action should be ignored * * * [unless they] are so fundamentally prejudicial as to constitute a deprivation of due process.")

Plaintiff received a letter from Customs dated January 27, 1992, informing it that the previous rulings were under consideration to be revoked. Customs invited Plaintiff to inform Customs of Plaintiff's position on the possible revocation. Letter of Jan. 27, 1992, see Ex. 10 to Motion.

In response, Plaintiff submitted two letters opposing the revocation, met with officials of the Office of Regulations and Rulings ("OR&R") to present that position, along with representatives of other importers, and made another written submission at that meeting. See HRL 951028, Ex. 7 to Motion. Representatives of domestic producers of the subject merchandise also met with officials of OR&R to present their views. Plaintiff submitted a final written submission, dated February 11, 1993. *Id.*

Thus, despite Plaintiff's notice argument, an opportunity to obtain a public discussion and review of the issues did exist and it was, in fact, fully utilized. Therefore, although a notice in the Federal Register was not published, Customs did fulfill the regulation's intent, and provided Plaintiff and other interested parties an opportunity to be heard.

D

CUSTOMS HAD THE AUTHORITY TO RECLASSIFY THE SUBJECT MERCHANDISE WITHOUT A CHANGE HAVING BEEN MADE IN THE TEXT OF THE HTSUS, EVEN THOUGH SUCH RECLASSIFICATION RESULTED IN A CHANGE IN THE RATE OF DUTY APPLICABLE TO THE PRESENTATION BOXES

Customs is charged with classifying merchandise and fixing the rate of duty. 19 U.S.C. § 1500(b). "Resolution of [whether particular imported merchandise has been classified under an appropriate tariff provision] entails a two-step process: (1) ascertaining the proper meaning of specific terms in the tariff provision; and (2) determining whether the merchandise at issue comes within the description of such terms as properly construed." *Sports Graphics, Inc. v. United States*, 24 F.3d 1390, 1391 (Fed. Cir. 1994). Duty is then assessed at the rate established for the proper classification provision. See 19 U.S.C. § 1500.

Customs does not set the duty rates. Only Congress is empowered to lay and collect taxes (including duties). Constitution of the U.S., Art. I, Sect. 8. Congress approved the duty rates in the tariff statute and Customs simply applies the rates to goods.

The tariff statute in effect at the time the subject merchandise entered the United States was the HTSUS. The HTSUS was the result of the United States' accession to the International Convention on the Harmonized Commodity Description and Coding System (the "Harmonized System"). Congress passed the implementing legislation in the Omnibus Trade and Competitiveness Act of 1988 on August 23, 1988.

The United States surrendered no sovereignty when it acceded to the Convention, and it is not obligated to apply the Harmonized System uniformly with the other Contracting Parties. "Guidance For Interpretation Of Harmonized System", 23 Cust. Bull. 379-380, T.D. 89-80. There is, however, an obligation to "not modify the scope of the Sections, Chapters, headings or subheadings of the Harmonized System." *Id.* at 380. As a result, Customs looks to background documentation in interpreting the HTSUS so that its classification rulings do not modify the system. *Id.*

1

CUSTOMS CORRECTLY CONSULTED THE EXPLANATORY NOTES, EVEN THOUGH THEY WERE AMENDED, IN DETERMINING TO RECLASSIFY THE PRESENTATION BOXES

The Explanatory Notes to the Harmonized System are particularly helpful to Customs. In considering the role of the Explanatory Notes, Congress stated:

The Explanatory Notes constitute the Customs Cooperation Council's official interpretation of the Harmonized System. They provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the system.

The Explanatory Notes were drafted subsequent to the preparation of the Harmonized System nomenclature itself, and **will be modified from time to time** by the CCC's Harmonized System Committee. Although generally indicative of proper interpretation of the various provisions of the Convention, the Explanatory Notes, like other similar publications of the Council, are not legally binding on contracting parties to the Convention. Thus, while they should be consulted for guidance, the Explanatory Notes should not be treated as dispositive.

Report of the Joint Comm. On The Omnibus Trade and Competitiveness Act, P.L. 100-418, H. Conf. Rep. No. 100-576, 100th Cong., 2nd Sess., at 549 (emphasis added).

Plaintiff claims that Customs reclassified the presentation boxes as a result of the amendment to the Explanatory Notes without any Congressional action or Presidential Proclamation, and that it thus "usurped the authority of Congress by changing the duty rates without any amendment of the HTSUS". Motion at 10. Plaintiff argues that Customs' actions amount to allowing a foreign body to determine U.S. duty rates, contrary to U.S. law.

Plaintiff's argument fails. When classifying merchandise, Customs must determine the common meaning of the tariff terms, and may look

to the Explanatory Notes to do so. *Ugg Int'l v. United States*, 17 CIT 79, 83-84, 813 F. Supp. 848, 852-53 (1993). As noted above, Congress recognized that the Explanatory Notes would be occasionally modified, and could still be "consulted for guidance."

Here, Customs determined the common meaning of "jewelry boxes". It considered the amended Explanatory Note and decided to adopt it as the common meaning of "jewelry boxes". Then, Customs found that the presentation boxes fit within the common meaning of "jewelry boxes" and assessed the appropriate duty rate set forth in the HTSUS.¹⁰

Customs has not "changed the duty rates" applicable to the presentation boxes. Rather, Customs has reclassified the presentation boxes in a different subheading based on its most up-to-date understanding of the common meaning of the relevant tariff terms. The fact that the different subheading carries a higher duty rate than the former classification does not constitute an usurpation of authority because Congress established the duty rates in the HTSUS. Indeed, Defendant argued, "[t]he language and rates of duty applicable under both the old and new subheadings remained the same." Cross-Motion at 21. Customs could properly use the amended Explanatory Note to determine the common meaning of a tariff term, even though the merchandise at issue is then reclassified under a higher tariff.

2

CUSTOMS DID NOT NEED ACTION BY THE ITC TO RECLASSIFY THE PRESENTATION BOXES

The International Trade Commission ("ITC") is charged with keeping the HTSUS under continuous review. In conjunction with this responsibility, 19 U.S.C. §3005(a) provides that the ITC:

shall recommend to the President such modifications in the [HTSUS] as the [ITC] considers necessary or appropriate—

(1) to conform the [HTSUS] with amendments made to the Convention;

(2) to promote the uniform application of the Convention and particularly the Annex thereto;

(3) to ensure that the [HTSUS] is kept up-to-date in light of changes in technology or in patterns of international trade;

(4) to alleviate unnecessary administrative burdens; and

(5) to make technical rectifications.

Plaintiff argues that the ITC had to suggest modification of the HTSUS to ensure that the presentation boxes would be dutiable at the previous rates, and the President had to issue a proclamation concerning the modification, before the goods could be reclassified based on an amended Explanatory Note. Motion at 26-28. Refusal by the ITC to recommend any changes results in the existence of the *status quo*. Plaintiff's Reply at 17.

¹⁰ The Court does not make any determination regarding whether the presentation boxes are properly classified as "jewelry boxes" within Heading 4202. That will be before the Court in a subsequent proceeding.

Plaintiff suggests that Customs should have proceeded in this case as it did in a case involving fortified orange juice. 56 Fed. Reg. 25692, ITC Investigation 1205-2 (June 5, 1991) ("*Fortified Orange Juice*"). In that case, the Harmonized System Committee ("HSC") examined the classification of certain orange juice fortified with calcium. The HSC decided that the fortified orange juice should be classified as food preparation not elsewhere specified or included in heading 21.06 rather than as orange juice of heading 20.09. The United States did not agree with this decision, and entered a reservation. Customs requested action by the ITC to recommend to the President the necessary modifications to the HTSUS to promote the uniform application of the Convention. *Id.*

This case is distinguishable from *Fortified Orange Juice*. Unlike the case in *Fortified Orange Juice* where the HSC examined the orange juice at issue and determined its classification, Plaintiff has offered no evidence that the subject merchandise was examined. Rather, it appears the Explanatory Note's description of "jewelry boxes" was simply amended without any explicit statement that the presentation boxes *per se* were to be classified there.

In addition, although the United States did not agree with the first proposed amendment to the Explanatory Notes, see *Section II Background, supra*, there is no indication that the United States did not agree with the amendment as ultimately adopted, nor did the United States enter a "reservation" regarding the amendment, as was the situation in *Fortified Orange Juice*. Customs was not obligated to follow its actions in *Fortified Orange Juice*.

As discussed above, Customs acted appropriately in considering the amended Explanatory Note's description of the tariff term and assessing the appropriate duty as found in the HTSUS. An amendment to the Explanatory Notes is not "an amendment to the Convention" which would need action by the ITC and the President to be effective because the Explanatory Notes are not a part of the Convention. See Omnibus Trade and Competitiveness Act of 1988, *supra*.

Indeed, the ITC did conduct an investigation upon the issues raised by Jewelpak, in which Jewelpak fully participated. In rejecting Jewelpak's argument that the HTSUS had to be modified for any change to be effective, the ITC found that none of the prerequisites requiring an ITC recommendation for tariff modification pursuant to section 3005 were satisfied:

First, no amendment of the HS Convention occurred as a result of the HSC's adoption of the new Explanatory Note that confirmed the inclusion of point-of-purchase jewelry presentation boxes in heading 4202. Second, uniform application of the Convention has apparently been promoted by Customs' recent ruling to reclassify these products—changes in duty rates notwithstanding—in heading 4202. Third, changes in technology or trade patterns are not at issue in this case. Fourth, the importers' proposal does not alleviate any unnecessary administrative burden and, in fact, may lead to increased administrative burden. Finally, the proposed modifications

cannot be considered to be within the realm of technical rectifications to the HTS.

"Proposed Modifications to the Harmonized Tariff Schedule of the United States", USITC Pub. No. 2673 at 5 (Aug. 1993); Cross-Motion at 22-23.

IV

CONCLUSION

For the foregoing reasons, Plaintiff's Motion For Summary Judgment is denied and Defendant's Motion For Partial Summary Judgment is granted. The second and third causes of action of Jewelpak's Complaint are dismissed.

(Slip Op. 96-190)

SAARSTAHL AG, PLAINTIFF V. UNITED STATES, DEFENDANT, AND INLAND
STEEL BAR CO., DEFENDANT-INTERVENOR

Consolidated Court No. 93-04-00219

Plaintiff Saarlstahl AG moves pursuant to Rule 15 of the rules of this Court for Leave to Amend its Complaint to include a Count VII to challenge the Department of Commerce's use of the 15-year average useful life found in the Internal Revenue Service tax tables to allocate the benefit of nonrecurring subsidies as unsupported by substantial evidence on the record and not otherwise in accordance with law.

Plaintiff Saarlstahl AG also moves pursuant to Rules 7, 16, 56.2(e), and 15(d) of the rules of this Court for Oral Argument or Alternatively for Supplemental Briefing on the issues remaining undecided after this Court's final judgment in *Saarlstahl AG v. United States*, Slip Op. 96-154 (CIT September 3, 1996).

Defendant moves to Strike Paragraph 3 of Plaintiff's Comments on Remand due to the alleged untimeliness of plaintiff's raising the allocation issue.

Held: Saarlstahl's Motion for Leave to Amend its Complaint is denied, Saarlstahl's Motion for Supplemental Briefing is denied and Defendant's Motion to Strike Paragraph 3 of Plaintiff's Comments on Remand is granted. The Court reserves decision on Saarlstahl's Motion for Oral Argument as to other issues besides allocation. As to allocation, Saarlstahl's Motion for Oral Argument is denied.

(Dated December 2, 1996)

deKieffer & Horgan (J. Kevin Horgan, Marc E. Montalbino), counsel for plaintiff.

Frank W. Hunger, Assistant Attorney General of the United States; *David M. Cohen*, Director, Commercial Litigation Branch, Civil Division, United States Department of Justice, (A. David Lafer, Jeffrey M. Teleg); *Jeffery C. Lowe*, Attorney-Advisor, Office of Chief Counsel for Import Administration, United States Department of Commerce, counsel for defendant.

Wiley, Rein & Fielding (Charles O. Verrill, Will Martin), counsel for defendant-intervenor.

OPINION

CARMAN, *Chief Judge*: Before the Court is plaintiff's Motion for Leave to Amend its Complaint to include a Count VII challenging the Depart-

ment of Commerce's ("Commerce" or "Department") use of the 15-year useful life found in the Internal Revenue Service (IRS) tax tables to allocate the benefit of nonrecurring subsidies, rather than the actual average useful life of Saarstahl's physical assets. Saarstahl requests the Court remand the issue to the International Trade Administration (ITA) with instructions to allocate the benefit of nonrecurring subsidies based upon the actual average useful life of Saarstahl's physical assets. Both defendant and defendant-intervenor oppose amendment of the complaint at this late juncture. In addition, Saarstahl has moved for oral argument or alternatively for supplemental briefing with regard to the issues remaining undecided after this Court's final judgment in *Saarstahl AG v. United States*, Slip Op. 96-154 (CIT September 3, 1996). Also before the Court is defendant's Motion to Strike Paragraph 3 of Plaintiff's Comments on Remand. Defendant asserts Saarstahl's failure to raise the allocation issue during the administrative proceeding forecloses its raising the issue at this time. Defendant-intervenor supports this motion while Saarstahl opposes it. The Court has jurisdiction over the matter pursuant to 28 U.S.C. § 1581(c) (1988).

BACKGROUND

In *Saarstahl AG v. United States*, 78 F.3d 1539 (Fed. Cir. 1996), the United States Court of Appeals for the Federal Circuit ("Federal Circuit" or "CAFC") reversed and remanded this Court's decision in *Saarstahl, AG v. United States*, 858 F. Supp. 187 (CIT 1994). This Court subsequently remanded the action to Commerce in *Saarstahl AG v. United States*, Slip Op. 96-133 (CIT Aug. 13, 1996).

On September 3, 1996, this Court found those aspects of the *Saarstahl Remand* pertaining to the issue of privatization were supported by substantial evidence on the record and otherwise in accordance with law and entered final judgment with respect to the privatization issue pursuant to U.S. CIT R. 54(b). See *Saarstahl AG v. United States*, Slip Op. 96-154 (CIT September 3, 1996). In Slip Op. 96-154, the Court also denied Saarstahl's motion for oral argument, but indicated the non-privatization issues would be decided in a future, separate opinion and oral argument might be appropriate to assist the Court in resolving those non-privatization issues. *Saarstahl AG v. United States*, Slip Op. 96-154 at 8 n.3 (CIT September 3, 1996). Saarstahl subsequently filed a notice of appeal of Slip Op. 96-154 on October 22, 1996. *Saarstahl AG v. United States*, Slip Op. 96-154 (CIT September 3, 1996), *appeal docketed*, No. 97-1122 (Fed. Cir. November 25, 1996). The United States also filed a notice of appeal on November 4, 1996. *Saarstahl AG v. United States*, Slip Op. 96-154 (CIT September 3, 1996), *appeal docketed*, No. ____ (Fed. Cir. ____, 1996).¹

¹ As of the date of this opinion, the appeal by the United States had not been docketed.

CONTENTIONS OF THE PARTIES

A. Plaintiff's Motion for Leave to Amend Its Complaint:

Saarstahl argues the motion to amend its complaint should be granted because use of the new allocation methodology is required by the Court's recent decisions in *British Steel plc v. United States*, 929 F. Supp. 426 (CIT 1996) (*British Steel III*) and *British Steel plc v. United States*, 879 F. Supp. 1254 (CIT 1995) (*British Steel I*). In the *British Steel* opinions, this Court struck down Commerce's use of the 15-year average useful life from the IRS tax tables to allocate the benefit of nonrecurring subsidies, see *British Steel I*, 879 F. Supp. at 1298 (concluding "Commerce's use of a 15-year allocation period based solely on the IRS tax tables is 'unsupported by substantial evidence on the record [and is] otherwise not in accordance with law'" (citation omitted) (bracketed text in original), and affirmed a methodology which allocated nonrecurring subsidies based upon actual average useful life (AUL) of the physical assets for each respondent. See *British Steel III*, 929 F. Supp. at 439. Saarlstahl maintains under the allocation methodology dictated by this Court in the *British Steel* opinions, Commerce must calculate company-specific AULs by using the asset values and depreciation information listed in the company's financial statements. By dividing the gross book value of physical assets by the related annual depreciation expense, Commerce determines a "reasonable estimate of average useful life." See *British Steel III*, 929 F. Supp. at 434 (citation omitted).

Defendant and defendant-intervenor oppose Saarlstahl's motion, arguing it is too late in the proceeding for Saarlstahl to amend its complaint to raise the allocation issue. Defendant and defendant-intervenor claim Saarlstahl did not raise the allocation issue at the administrative level. Additionally, they argue Saarlstahl could have challenged the 15-year allocation methodology at any point from the beginning of the original investigation in mid-1992 to the issuance of this Court's first Saarlstahl decision in mid-1994 and "[i]ts delay in doing so disqualifies [the complaint's] amendment now." (Def. Interv.'s Opp'n to Pl.'s Mot. to Amend Compl. at 2.)

B. Defendant's Motion to Strike Paragraph 3 of Plaintiff's Comments on Remand:

In paragraph 3 of its Comments on Remand, Saarlstahl challenges Commerce's use of the 15-year average useful life found in the IRS tax tables rather than the actual average useful life of Saarlstahl's physical assets and requests the Court remand the matter to Commerce with instructions to allocate the countervailable benefits received by Saarlstahl based upon the actual 9-year average useful life of Saarlstahl's physical assets. Defendant objects to this comment, asserting the issue "is not the subject of the remand ordered by the Court," and plaintiff has failed to raise the allocation issue "either in its complaint, or in any of its papers during the long course of these proceedings." (Def.'s Mot. to Strike Par. 3 of Pl.'s Comm. on Remand at 1.)

C. Plaintiff's Motion for Supplemental Briefing:

Saarstahl requests this Court direct oral argument on the non-privatization issues remaining after this Court's final judgment in *Saarstahl AG v. United States*, Slip Op. 96-154 (CIT September 3, 1996). Saarlthahl argues oral argument is "vitally important because of the significant amount of time which has transpired since the issues in this case were last briefed" and because of the issuance of decisions relevant to this proceeding by this Court and the CAFC during that time. (Pl.'s Mot. for Oral Arg. or Alt. for Supp. Brief. at 1.)² Alternatively, plaintiff requests it be allowed to file a supplemental brief on the non-privatization issues, including the issue of allocation. In its initial response to plaintiff's Motion for Oral Argument or Alternatively for Supplemental Briefing, defendant stated it would defer to the discretion of this Court with respect to plaintiff's application for oral argument. (Def.'s Resp. to Pl.'s Mot. for Oral Arg. at 2.) Defendant subsequently moved to suspend supplemental briefing pending resolution of the outstanding motions regarding the allocation issue.

DISCUSSION

Rule 15(a) of the Rules of the United States Court of International Trade, which parallels Rule 15(a) of the Federal Rules of Civil Procedure, provides that once responsive pleadings have been served, a party may amend its pleading "only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires." U.S. CIT R. 15(a). It is within the discretion of the trial court to grant or deny a motion for leave to amend a complaint. See *Intrepid v. Pollock*, 907 F.2d 1125, 1129 (Fed. Cir. 1990) *rev'd on other grounds*, 972 F.2d 1355 (Fed. Cir. 1992) ("It is settled that the grant of leave to amend the pleadings * * * is within the discretion of the trial court.") (quoting *Zenith Radio Corp. v. Hazeltine Research, Inc.*, 401 U.S. 321, 330, 91 S.Ct. 795, 802, 28 L.Ed.2d 77 (1971)). In *Foman v. Davis*, 371 U.S. 178, 182, 83 S.Ct. 227, 230, 9 L.Ed.2d 222 (1962), the Supreme Court held the requirement that leave be freely given must be balanced against numerous considerations protecting the rights of the opposing party. The Supreme Court stated:

If the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits. In the absence of any apparent or declared reason—such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of amendment, futility of amendment, etc.—the leave sought should, as the rules require, be "freely given."

Id. The court must make a "discretionary decision, in the sense that the court weigh[] considerations such as undue delay, prejudice to the opposing party and the like." *Intrepid*, 907 F.2d at 1129.

² The final briefs in this case were filed in April 1994.

Examining the factors set forth in *Foman*, this Court concludes Saars-tahl's Motion for Leave to Amend its Complaint must be denied because it comes so late in the proceeding that it would cause undue delay and unfairly prejudice the other parties. Although Saars-tahl's assertion that the Court has often permitted parties to amend their complaints, even when the new claim had not been raised at the administrative level, is correct, *see, e.g., Timken Co. v. United States*, 15 CIT 658, 659-60, 779 F. Supp. 1402, 1404-05 (1991); *Ceramica Regiomontana, S.A. v. United States*, 14 CIT 706, 708-09 (1990) (citing *Hormel v. Helvering*, 312 U.S. 552, 557-59 (1941)); *Rhone Polenc, S.A. v. United States*, 7 CIT 133, 137-38, 583 F. Supp. 607, 611-12 (1984), this Court must also consider those factors cited in *Foman* which apply to this case.

To show prejudice, defendant "must show that it was unfairly disadvantaged or deprived of the opportunity to present facts or evidence which it would have offered had the amendment[] been timely." *Cuffy v. Getty Ref. & Mktg. Co.*, 648 F. Supp. 802, 806 (D. Del. 1986) (citation omitted) (quoted in *Ford Motor Company v. United States*, 896 F. Supp. 1224, 1231-32 (CIT 1995)). Saars-tahl failed to raise the allocation issue at an earlier date when it had the ability to do so and when it would not have prejudiced the rights of the opposing parties. The Court finds no evidence Saars-tahl raised the allocation issue at the administrative level, when the parties would have been able to gather information and present evidence regarding the new allocation methodology. Saars-tahl acknowledged this to be the case in its motion when it argued, "[t]he fact that Saars-tahl did not expressly raise the issue of the 15-year allocation period at the administrative level does not bar the Court from permitting Saars-tahl to amend its complaint."³ (Pl.'s Mot. for Leave to Amend Compl. at 5.)

Although the Court finds Saars-tahl's arguments persuasive, in the interest of conserving judicial and party resources and, further, in avoiding substantial prejudice to the other parties, the Court finds it necessary to deny Saars-tahl's motion to amend its complaint. In *Te-Moak Bands of Western Shoshone Indians v. United States*, 948 F.2d 1258, 1261 (Fed. Cir. 1991) (quoting *Carson v. Polley*, 689 F.2d 562, 584 (5th Cir. 1982)), the CAFC stated, "[a] litigant's failure to assert a claim as soon as he could have is properly a factor to be considered in deciding whether to grant leave to amend." Although "delay itself is an insufficient ground to deny amendment, if the delay is 'undue' the district court may refuse to permit amendment." *Datascope Corp. v. SMEC, Inc.*, 962 F.2d 1043, 1045 (Fed. Cir. 1992) (citations omitted). The view that delay becomes undue when it prejudices the opposing party is generally accepted. *See Dooley v. United Technologies Corp.*, 152 F.R.D. 419, 425 (D.D.C. 1993) ("[A] motion to amend a pleading * * * may be denied if the delay causes undue prejudice to the opposing party.") (citation omitted); *United States v. Mexico Feed & Seed Co.*, 980 F.2d 478, 485 (8th

³ Counsel for Saars-tahl also acknowledged Saars-tahl did not raise the allocation issue at the administrative level during a phone conference on November 21, 1996.

Cir. 1992). The CAFC also maintained "[a]t some point in the course of litigation, an unjustified delay preceding a motion to amend goes beyond excusable neglect, even when there is no evidence of bad faith or dilatory motive." *Te-Moak Bands*, 948 F.2d at 1262-3 (quoting *Daves v. Payless Cashways, Inc.*, 661 F.2d 1022, 1025 (5th Cir. 1981)). Although there is no evidence of bad faith by Saarstahl in the present case, unlike the cases Saarstahl cites, the debate over the proper allocation methodology is not a new issue but rather has been a live issue for many years. "It is not information that has only recently come to light." *Te-Moak Bands*, 948 F.2d at 1262 (quoting *Chitimacha Tribe of Louisiana v. Harry L. Laws Co.*, 690 F.2d 1157, 1163 (5th Cir.) cert. denied, 464 U.S. 814, 104 S.Ct. 69, 78 L.Ed.2d 83 (1982)).

The Court does not take comfort in plaintiff's assertion that all of the information necessary for Commerce to calculate a specific AUL for Saarstahl is already part of the administrative record in this case. The Court also disagrees that the time required for remand of this issue would "be only minimal and could not be seen as causing substantial prejudice to the opposing parties." (Pl.'s Mot. for Leave to Amend Compl. at 4.) The Court finds allowing Saarstahl to raise the allocation issue at this time would unfairly prejudice both defendant-intervenor Inland Steel Bar Company as well as the Commerce Department. Application of the new allocation methodology in this proceeding could warrant gathering new information and possibly verification. Commerce has limited resources to perform such acts and if the administrative record is not complete, acquiring the necessary information at this late date would cause undue delay and expense to the parties. As noted by Wright & Miller, "[T]he risk of substantial prejudice increases with the passage of time." 6 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1488 (1971).

The Court also disagrees with Saarstahl's argument that challenging Commerce's use of the 15-year allocation period based upon the IRS tax tables at the administrative level "would certainly have been futile." (Pl.'s Mot. for Leave to Amend Compl. at 6.) Even though Commerce continued to use the 15-year period after this Court struck it down in *British Steel Corp. v. United States*, 10 CIT 224, 238, 632 F. Supp. 59, 68 (1986) and ignored specific challenges to its use, had Saarstahl raised this issue at the administrative level, this Court would have been able to consider the issue on a complete record. Defendant-intervenor points to the challenges to the 15-year allocation period by United Engineering Steels and Unisor-Sacilor, respondents in companion investigations of leaded steel bars from the United Kingdom and France, as examples where the litigants raised their objections to the allocation methodology during the administrative process, despite Commerce's continued use of the 15-year period after this Court struck it down in 1986. See *Certain Hot Rolled Lead and Bismuth Carbon Steel Products from France*, 58 Fed. Reg. 6,221, 6,230 (Dep't Comm. 1993) (final determ.); *Certain Hot Rolled Lead and Bismuth Carbon Steel Products from the United King-*

dom, 58 Fed. Reg. 6,237, 6,245 (Dep't Comm. 1993) (final determ.). As this Court noted in *Budd Co., Wheel & Brake Div. v. United States*, 15 CIT 446, 453, 773 F. Supp. 1549, 1555 (1991) (citation omitted), "[p]laintiff did not attempt to raise its present line of argument before Commerce on the assumption that Commerce would not be amenable to its proposals. This is no excuse for Plaintiff's not exhausting its administrative remedies."

In addition, allowing Saerstahl to raise the allocation issue now would be contrary to this Court's decision in *Geneva Steel v. United States*, 914 F. Supp. 563 (CIT 1996). In *Geneva Steel*, although the Court recognized the allocation issue was currently before the Court as a general issue following remand to Commerce in accord with the Court's decision in *British Steel I*, the Court did not allow plaintiff to raise the allocation issue at oral argument because the issue had not been briefed. In the present case, not only was the issue of allocation not previously briefed by the parties, but Saerstahl was not a party to the general issues remand referred to in *Geneva Steel*. In a footnote in *Geneva Steel*, the Court stated, "[a]lthough counsel for Fabfer insisted at oral argument that its 'complaint was very broad' and 'there's room * * * for this issue to be alive in this case,' the Court finds otherwise and will not consider the issue of the allocation period in this opinion." *Geneva Steel*, 914 F. Supp. at 604 n. 52 (citation omitted).

Finally, this Court notes the mandate of 28 U.S.C. § 2637(d), which directs this Court to require, where appropriate, "the exhaustion of administrative remedies." 28 U.S.C. § 2637(d) (1988). As the Court stated in *Budd Co., Wheel & Brake Div. v. United States*, 15 CIT 446, 452, 773 F. Supp. 1549, 1554 (1991) (quoting *Unemployment Compensation Comm'n of Alaska v. Aragon*, 329 U.S. 143, 155, 67 S.Ct. 245, 251, 91 L.Ed. 136 (1946)) "[i]t is well established that '[a] reviewing court usurps the agency's function when it sets aside the administrative determination upon a ground not theretofore presented and deprives the [agency] of an opportunity to consider the matter, make its ruling, and state the reasons for its action.'" Exhaustion of administrative remedies is imperative to ensure that the agency and the interested parties fully develop the facts to aid judicial review. See *Budd Co.*, 773 F. Supp. at 1555. Although the Court has discretion to make limited exceptions to the exhaustion requirement in cases where strict enforcement would be inappropriate, this Court is not persuaded it should exercise its discretion to make a new and limited exception in this case.

The cases cited by plaintiff as examples of exceptions to the exhaustion requirement are distinguishable from the case at hand. In *Timken Co. v. United States*, 15 CIT 658, 659-60, 779 F. Supp. 1402, 1404-05 (1991), for example, the Court held no exhaustion of administrative remedies is required when a judicial interpretation of existing law intervenes after the remand proceeding changing the agency result. In *Timken Co.*, plaintiff moved to amend its complaint because this Court's ruling in a subsequent case reversed prior ITA practice and could poten-

tially change the outcome of its case. The United States and defendant-intervenor opposed the motion since the issue had not been raised at the administrative level and they believed an amendment would unduly prejudice the government. The Court granted plaintiff's motion, however, holding Timken could not reasonably have known this Court would reverse ITA policy in a later case and as the issue was a purely legal one requiring no additional fact-finding, the government would not be unduly prejudiced by the amendment.

Similarly, in *Rhone Poulenc, S.A. v. United States*, 7 CIT 133, 137-38, 583 F. Supp. 607, 611-12 (1984), the Court held exhaustion of administrative remedies is not required when plaintiff raises a new argument purely legal in nature which requires no further agency involvement or when it would have been futile for plaintiff to raise its argument at the administrative level. In *Rhone Poulenc*, plaintiff moved to amend its complaint after all responsive pleadings were served because another opinion of this Court held invalid the same action the ITA had taken in plaintiff's case. This Court permitted plaintiff to amend its complaint even though plaintiff had not challenged the validity of the regulation at issue before the ITA. The Court stated since the issue was one of law which did not require either additional fact-finding or a new trial, there was no undue prejudice to the government. The Court also held it would have been futile for plaintiff to "argue that the agency should not apply its own regulation * * * had plaintiffs raised the alternative arguments different results would not have materialized in the administrative proceedings." *Rhone Poulenc*, 583 F. Supp. at 610. The Court also held "there is no prejudice to defendants stemming from failure to raise this issue at the administrative level." *Id.* at 611. Finally, the Court stated plaintiff could not have anticipated that a court would overturn the regulation. *Id.* at 612.

The exception to the exhaustion requirement set forth in *Timken and Rhone Poulenc*—that exhaustion of administrative remedies is not required when plaintiff raises a new argument purely legal in nature which requires no further agency involvement—does not apply to this case since Saerstahl is not raising a new argument purely legal in nature which does not require additional fact-finding. Quite the contrary, plaintiff's argument would demand considerable agency involvement. Granting plaintiff's motion would necessitate opening up the record and would create undue delay and expenditure of scarce party time and resources. To change the allocation methodology at this stage of the proceeding could warrant a new investigation, gathering new information and then the verification of that additional information. This further agency involvement on remand would certainly cause substantial delay in this already lengthy proceeding and the Court finds that such delay would cause substantial prejudice to Commerce and Inland Steel Bar Company. As defendant points out, this case is more similar to *Budd Co., Wheel & Brake Division*, 15 CIT 446, 452, 773 F. Supp. 1549, 1554-55 (1991) (requiring exhaustion of administrative remedies when plain-

tiff's arguments are "not purely legal issues requiring no further agency involvement" and when instead "plaintiff seeks a second remand, requiring Commerce to recalculate the circumstance of sale adjustment for devaluation and to conduct an absorption study measuring the incidence of tax pass-through to the Brazilian consumer") or to *Corporacion Sublistatica, S.A. v. United States*, 1 CIT 120, 126-27, 511 F. Supp. 805, 810 (1981) (where defendant's amendment to answer would have resulted in substantial inconvenience, such as a new trial, the Court found prejudice existed and denied a motion to amend).

The second exception discussed in *Rhone Poulenc*—that exhaustion of administrative remedies is not required when it would have been futile for plaintiff to raise its argument at the administrative level—also does not apply in this case. Unlike the plaintiff in *Rhone Poulenc*, Saarsstahl's challenge was not to an existing valid regulation, but to a methodology that had been struck down by this Court in prior decisions. See *Ipsco, Inc. v. United States*, 12 CIT 359, 373, 687 F. Supp. 614, 626 (1988) (*Ipsco I*), *aff'd in part, rev'd in part on other grounds*, 899 F.2d 1192 (Fed. Cir. 1990); *Ipsco v. United States*, 12 CIT 1128, 1134, 701 F. Supp. 236, 241 (1988) (*Ipsco II*), *aff'd in part, rev'd in part on other grounds*, 899 F.2d 1192 (Fed. Cir. 1990); *British Steel Corp. v. United States*, 10 CIT 224, 236, 632 F. Supp. 59, 68 (1986). Accordingly, although Commerce had rejected challenges to use of its 15-year allocation period, this Court does not believe Saarsstahl's challenge to the allocation methodology at the administrative level would have been futile. Although Saarsstahl is correct that the Court's holding on allocation in the *British Steel I* and *British Steel III* opinions clarifies the law on this issue and Commerce now uses company-specific average useful life information to allocate nonrecurring subsidies, rather than the 15-year period based upon the IRS tax tables, *see, e.g., Live Swine from Canada; Preliminary Results of Countervailing Duty Administrative Review*, 61 Fed. Reg. 52,426, 52,427 (Dep't Comm. 1996), the fact that this Court had already struck down Commerce's methodology in 1986 and 1988 makes plaintiff's argument regarding the exception for new judicial interpretations less applicable to this case. Therefore, notwithstanding the intervention of the judicial interpretation set forth in the *British Steel* opinions, setting aside the exhaustion requirement in this case would unduly prejudice defendant and defendant-intervenor. Opening up the record at this late juncture in the proceeding will result in unfair delay and expense to the parties and improvidently dissipate precious judicial and administrative resources.

CONCLUSION

The Court denies Saarsstahl's Motion for Leave to Amend its Complaint and grants defendant's Motion to Strike Paragraph 3 of Plaintiff's Comments on Remand. Plaintiff's application for supplemental briefing is denied. Should the parties wish to renew their application for supplemental briefing on issues other than allocation, this Court will accept any timely application. The Court reserves decision on Saarsstahl's

Motion for Oral Argument as to other issues besides allocation. As to allocation, Saerstahl's Motion for Oral Argument is denied.

(Slip Op. 96-191)

BOARD OF TRUSTEES OF LELAND STANFORD JUNIOR UNIVERSITY,
PLAINTIFF *vs.* UNITED STATES, DEFENDANT

Court No. 95-08-01025

[Motion to dismiss for lack of jurisdiction is granted.]

(Dated December 9, 1996)

Pillsbury, Madison, & Sutro, LLP (Debra L. Zumwalt and Lynn L. Miller) for plaintiff.
Frank W. Hunger, Assistant Attorney General, *Joseph I. Liebman*, Attorney in Charge,
International Trade Field Office, Commercial Litigation Branch, Civil Division, United
States Department of Justice (*Bruce N. Stratvert*) for defendant.

OPINION

RESTANI, *Judge*: This matter is before the court on a motion to dismiss for lack of jurisdiction pursuant to USCIT Rule 12(b)(1). Defendant argues that the court lacks jurisdiction over the entry in issue because plaintiff Leland Stanford Junior University ("Stanford") failed to file a protest after reliquidation and the reliquidation of the entry has become final and conclusive. Plaintiff argues that its protest to the original liquidation was still pending and, therefore, there was no reason to file another protest at reliquidation. For the following reasons, the motion to dismiss is granted.

BACKGROUND

On June 3, 1993, Stanford applied to the United States Customs Department ("Customs") for duty-free entry of a transmission electron microscope ("TEM") purchased from a manufacturer in Holland to conduct scientific research under Item 9810.00.60 of the Harmonized Tariff Schedule of the United States, USITC Pub. 2567, Sec. XXII, ch. 98, at 32 (1993) [hereinafter "HTSUS"].¹ On November 2, 1993, Customs denied the application on the ground that it did not satisfy 15 C.F.R. § 301.4(a)(3) (1993),² which requires exclusive use of the imported item for non-commercial purposes and, thus, the TEM would not be classified under Item 9810.00.60. *See* Customs' Nov. 2, 1993 Letter; Compl., Ex. B. The basis for Customs' determination was Stanford's

¹ Item 9810.00.60 of the HTSUS provides for duty-free importation of scientific instruments by non-profit educational institutions for non-commercial use where there is no comparable domestic product available.

² 15 C.F.R. § 301.4(a)(3) states in relevant part:

(a) [T]he Commissioner shall determine:

(3) Whether the instrument which is the subject of the application is intended for the exclusive use of the applicant institution and is not intended to be used for commercial purposes. For the purposes of this section, commercial uses would include, but not necessarily be limited to: * * * any use by, or for the primary benefit of, a commercial entity * * *.

statements that "there may be collaborative research with industry," and that Stanford's "faculty and staff do on occasion carry out collaborative research with their scientific counterparts in industry," suggesting to Customs the possibility of commercial use. *Id.* Customs instead classified the TEM under subheading 9012.90.00 of the HTSUS at 6.2% *ad valorem* and liquidated the entry on March 18, 1994.

Stanford protested the classification on the grounds that the TEM should be classified under subheading 9810.00.60 allowing duty-free treatment or, in the alternative, that the TEM should be classified under subheading 9012.10.00 of the HTSUS at 4.4% *ad valorem*, with a preference for the duty-free classification.³ On February 10, 1995, responding to Stanford's protest,⁴ Customs stated:

The protest is denied in part. The electron microscope is affirmed to be ineligible for duty-free treatment under subheading 9810.00.60, HTSUS, inasmuch as there is commercial use of the microscope as shown by collaboration with industry in research utilizing the microscope. However, we agree with the protestant's item (2) that the electron microscope is properly classified under the alternative classification 9012.10.00, HTSUS, inasmuch as duty-free entry is denied under subheading 9810.00.60, HTSUS.

Cust. HQ Rul. 558673, at 6-7 (Dec. 14, 1994); Compl., Ex. A. Accordingly, Customs reliquidated the TEM under subheading 9012.10.00 at the 4.4% rate. Stanford now seeks judicial review of Customs' partial denial of its protest.

DISCUSSION

Stanford argues that the court has jurisdiction over this matter pursuant to 28 U.S.C. § 1581(a) (1994) which provides:

The Court of International Trade shall have exclusive jurisdiction of any civil action commenced to contest the denial of a protest, in whole or in part, under [19 U.S.C. § 1515].

Customs denied the request for duty-free treatment under subheading 9810.00.60, but granted Stanford's request to reclassify the TEM under subheading 9012.10.00 with the lower rate of 4.4%.

Although Customs expressly stated that the protest is "denied in part," under case law this statement is not dispositive. The court must look to what Customs actually did. Stanford argues that Customs' reliquidation did not involve a determination regarding the duty-free status of the TEM; it only involved the appropriateness of classification 9012.10.00 as compared to 9012.90.00. Stanford relies upon *Ataka America, Inc. v. United States*, 79 Cust. Ct. 135, 137 (1977), for the prop-

³ Stanford alleges that its primary basis for protest was the request for duty-free status under the subheading 9810.00.60 and that the request for the alternative classification under subheading 9012.10.00 was secondary, i.e., that this alternative was requested only in the event that the duty-free classification was disallowed. While this might be inferred from the relative duty advantages of each provision, the record does not contain an express statement of this preference. See Protest No. 2809-94-100266, Attach. C; Compl., Ex. I.

⁴ Stanford's formal "protest" was actually filed before liquidation, but the defendant has withdrawn its challenge to jurisdiction on that ground as later submissions were considered either a sufficient protest or post-liquidation ratifications of the premature protest.

osition that an original liquidation is only nullified as to the question with which the reliquidation dealt. "As to all other matters, not the subject of reliquidation, the original liquidation remain[s] in full effect." *Id.* Stanford, therefore, asserts that the original liquidation is the final protestable decision on the question of duty-free status.

In *Ataka*, the reliquidation did not involve a change in classification. *Id.* at 135. The original liquidation dealt with an assessment of duties under subheading of 712.49 of the Tariff Schedule of the United States ("TSUS") for the imported gas chromatographs. *Id.* Customs also imposed a supplemental duty on this entry pursuant to a presidential proclamation. *Id.* On January 3, 1974, the plaintiff in *Ataka* protested the imposition of the supplemental duty. *Id.* On June 24, 1974, Customs reliquidated the merchandise under a reduced appraised value, but neither changed the classification nor addressed the previously protested issue of the supplemental duty. *Id.* On August 9, 1974, Customs denied the plaintiff's protest.⁵ The plaintiff filed a second protest following reliquidation, again contesting the assessment of the supplemental duty. *Id.* The court held that the plaintiff's protest of the reliquidation was improper because the issue of the supplemental duty's validity was not the subject of the reliquidation. *Id.* at 136.

Unlike in *Ataka*, here, Customs did decide the issue of duty-free status both explicitly and implicitly. First, in its reliquidation decision, Customs expressly affirmed its ruling that the TEM was ineligible for duty-free treatment, which was itself a classification ruling. See Cust. HQ Rul. 558673, at 6; Compl., Ex. A. Second, Stanford's protest dealt only with the issue of classification. See Protest No. 2809-94-100266; Compl., Ex. F. The protest contested Customs' classification of the TEM under subheading 9012.90.00, with a duty rate of 6.2%, and requested in the alternative either classification under subheading 9810.00.60, the duty-free provision, or subheading 9012.10.00, with a duty rate of 4.4%. See Protest No. 2809-94-100266, Attach. C; Compl., Ex. I. Customs, therefore, decided the issue of classification by choosing to reliquidate the TEM under 9012.10.00 instead of under its original classification of 9012.90.00 or Stanford's alternative classification of 9810.00.60. Under *Ataka*'s holding, by changing the classification in its reliquidation, Customs nullified the original liquidation. See 79 Cust. Ct. at 136.

Moreover, the facts here are analogous to the facts presented in *Sanyo Elec., Inc. v. United States*, 81 Cust. Ct. 114, 114 (1978). In *Sanyo Elec.*, the plaintiff protested Customs' classification of imported merchandise and offered two alternative classifications. *Id.* Customs reliquidated the merchandise under one of the alternative classifications requested in the plaintiff's protest. *Id.* The plaintiff subsequently filed a civil action claiming that as Customs rejected one classification while choosing the other classification, its protest was denied in part. *Id.*

The court in *Sanyo Elec.* stated that the plaintiff's argument would lead to absurd results. *Id.* at 115. Under the plaintiff's analysis, a protest

⁵ Although the plaintiff in *Ataka* properly filed a protest against the original liquidation and timely filed a summons, the plaintiff's failure to prosecute that action led to its dismissal in February 1977. *Ataka*, 79 Cust. Ct. at 137 n.3.

with alternative claims could never be granted in whole unless all claims are granted as "even the selection of the alternative most favorable to the protesting party would still be a denial in part." *Id.* The court in *Sanyo Elec.*, therefore, held that, "[w]hen the decision is entirely changed to conform to a decision sought by the protest, that protest has been completely granted."⁶ *Id.* Accordingly, the action was dismissed as no part of the original classification chosen by Customs in the original liquidation remained in effect because Customs reliquidated the merchandise under one of the plaintiff's requested classifications.⁷ *Id.*

As in *Sanyo Elec.*, here, no part of the original classification remains in effect. The original liquidation was under subheading 9012.90.00 at 6.2% and, after reliquidation, the TEM was classified under subheading 9012.10.00 at 4.4%, one of the alternative classifications proposed by Stanford.

Stanford attempts to distinguish the facts here from those of *Sanyo Elec.* by alleging that unlike the protest in *Sanyo Elec.*, Stanford's protest indicated a clear preference for the duty-free classification of subheading 9810.00.60 over the alternatively requested classification of subheading 9012.10.00 at 4.4%. Stanford claims that in *Sanyo Elec.*, the plaintiff offered the two alternative classifications with no manifest preference between the two. According to *Sanyo Elec.*, this has no bearing on the issue of whether or not a new protest needs to be filed after reliquidation. The court explained that:

If a party's preference for a rejected alternative claim is so strong that it wishes to pursue the claim even following the granting of another alternative claim, then its true quarrel is with its own claim and is not cognizable in a civil action designed to resolve disputes regarding decisions of the appropriate customs officer. The proper procedure would be for the party to advance its preferred alternative claim in a new protest against the revised decision following the reliquidation of the entry.

Id. Therefore, if Stanford had a strong preference for the duty-exempt classification, as it has indicated, it should have protested the reliquidation within 90 days thereof in accordance with 19 U.S.C. § 1514(c)(2)(A) (1988) and 19 C.F.R. § 174.12(e)(1) (1993).^{8,9}

Accordingly, defendant's motion to dismiss based on lack of jurisdiction is granted.

⁶ An example of an appealable denial in part is a denial as to some entries but not others, or granting an appraisalment change but denying a classification change.

⁷ This should be contrasted with *Ataka* where Customs' decisions involved two different categories of protest, that is, 19 U.S.C. § 1514(a)(1) (1976) (appraisalment) and 19 U.S.C. § 1514(a)(2) (classification and rate of duty).

⁸ Stanford also makes an argument that it would have been futile to file a protest after reliquidation with regard to the duty-free classification that they offered in their protest after the original liquidation. In light of the *Sanyo Elec.* holding, and because futility is not a valid reason for failing to meet a jurisdictional requirement, the court rejects this argument.

⁹ Although the *Sanyo* precedent is not new, it is unlikely plaintiffs were aware of it or indeed of the other technical requirements of protest procedures. (Note the ineffective preliquidation attempt to protest.) To aid the uninitiated, it would be helpful if Customs' regulations covered these matters with greater particularity, if Customs did not refer to a change of classification as a denial, and if Customs' response to a protest advised the party that in order to preserve its rights it must protest the changed classification.

PUBLIC VERSION

(Slip Op. 96-192)

BÖWE PASSAT REINIGUNGS-UND WÄSCHEREITECHNIK GMBH & BOEWE-
PASSAT DRYCLEANING & LAUNDRY MACHINERY CORP., PLAINTIFFS v.
UNITED STATES & U.S. DEPARTMENT OF COMMERCE, DEFENDANTS

Court No. 92-01-00058

[Commerce's remand redetermination affirmed in part; reversed in part.]

(Decided December 11, 1996)

Barnes, Richardson & Colburn, (Rufus E. Jarman, Jr., Ronald A. Oleynik) for Plaintiffs.

Frank W. Hunger, Assistant Attorney General of the United States, *David M. Cohen*, Director, Commercial Litigation Branch, Civil Division, United States Department of Justice, (*Velta Melnbrensis*); Of Counsel, *Robert Heilferty*, Attorney-Advisor, Office of the Chief Counsel for Import Administration, Department of Commerce, Counsel for Defendants.

OPINION

POGUE, Judge: On May 8, 1996, this Court directed Commerce to reconsider its denial of certain level of trade adjustments claimed by plaintiff during the underlying administrative review. *See Böwe Passat Reinigungs-und Waschereitechnik GmbH, et al. v. United States*, 926 F.Supp. 1138, 1141-1144 (1996). Familiarity with that decision is presumed.

The statute governing the period of review did not expressly provide for a level of trade adjustment.¹ The adjustment was covered by a regulation, 19 C.F.R. § 353.58, which Commerce implemented under its authority to make circumstances of sale adjustments, 19 U.S.C. § 1677b(a)(4)(B) (1988).² The regulation stated:

The Secretary normally will calculate foreign market value and United States price based on sales at the same commercial level of trade. If sales at the same commercial level of trade are insufficient in number to permit an adequate comparison, the Secretary will calculate foreign market value based on sales of such or similar merchandise at the most comparable commercial level of trade as

¹ The statute has since been amended and now provides for a level of trade adjustment. 19 U.S.C. § 1677b(7)(A) (1994):

Level of trade

The price described in paragraph (1)(B) shall also be increased or decreased to make due allowance for any difference (or lack thereof) between the export price or constructed export price and the price described in paragraph (1)(B) (other than a difference for which allowance is otherwise made under this section) that is shown to be wholly or partly due to a difference in level of trade between the export price or constructed export price and normal value, if the difference in level of trade—

(i) involves the performance of different selling activities; and

(ii) is demonstrated to affect price comparability, based on a pattern of consistent price differences between sales at different levels of trade in the country in which normal value is determined.

In a case described in the preceding sentence, the amount of the adjustment shall be based on the price differences between the two levels of trade in the country in which normal value is determined.

² The statute in effect at the time provided: "In determining foreign market value, if it is established to the satisfaction of the administering authority that the amount of any difference between the United States price and the foreign market value * * * is wholly or partly due to— * * * (B) other differences in circumstances of sale; * * * then due allowance shall be made therefor." 19 U.S.C. § 1677b(a)(4)(B) (1988).

sales of the merchandise and make appropriate adjustments for differences affecting price comparability.

19 C.F.R. § 353.58 (1989). The statute governing the regulation imposed the burden of supporting a claim for such an adjustment on the party claiming the adjustment. *Sugiyama Chain Co., Ltd. v. United States*, 891 F.Supp. 619, 626 (1995). The statute also vested Commerce with broad discretion to grant or deny the claimed adjustment.³ See 19 U.S.C. § 1677b(a)(4)(B) (1988) (the adjustment must be established "to the satisfaction of the administering authority") (emphasis added). Commerce could not exercise this discretion unreasonably or impose impossible burdens of proof on claimants. See *NEC Home Elecs. v. United States*, 54 F.3d 736, 745 (1995) (holding that burden imposed to prove a level of trade adjustment was unreasonable because claimant could, under no practical circumstances, meet the burden); *American Permac, Inc. v. United States*, 12 CIT 1134, 1135-1140, 703 F.Supp. 97, 99-102 (1988); *Silver Reed America, Inc. v. United States*, 12 CIT 910, 915, 699 F.Supp. 291, 295 (1988) ("* * * ITA's broad discretion to determine whether a factor or condition of sale warrants an adjustment in foreign market value must be exercised reasonably and in a non-arbitrary manner.").

Under the regulation, a respondent with actual sales at two levels of trade in the home market had the best chance of establishing a level of trade adjustment to Commerce's satisfaction. See, e.g., *Tapered Roller Bearings and Parts thereof from Japan*, 58 Fed. Reg. 64720, 64730 (Dep't Comm. 1993) (Final Results Admin. Rev.). The Court noted in *Silver Reed*, however, that such a scenario ordinarily would not require a level of trade adjustment because Commerce would compare those prices made at the same level of trade in the two different markets.⁴ *Silver Reed*, 699 F.Supp. at 295.

The more difficult situation, and the one typically in issue before the court, arose when a claimant with sales at one level of trade in the home market and sales at a different level of trade in the United States attempted to convince Commerce to make an adjustment. In those situations, the claimant had to demonstrate that the level of trade adjustment was limited to price differences attributable to different levels of trade, rather than to other factors. Commerce had the difficult task of distinguishing bona fide level of trade differences from actual dumping margins. At the same time, Commerce's grant or denial of the adjustment had to be reasonable and not arbitrary. See *NEC* 54 F.3d at 745.

To establish the link between differences in level of trade and differences in price, an econometric analysis need not necessarily be performed. See *Daewoo Electronics Co. v. International Union*, 6 F.3d 1511,

³ Several cases have addressed Commerce's exercise of this discretion. *NEC Home Elecs. v. United States*, 54 F.3d 736, 745 (Fed. Cir. 1995); *Sugiyama Chain Co. v. United States*, 891 F.Supp. 619, 625-29 (1995); *NTN Bearing Corp. v. United States*, 905 F.Supp. 1083, 1093-94 (1995); *NAR, S.p.A. v. United States*, 13 CIT 82, 83-86, 707 F.Supp. 553, 556-558 (1989); *American Permac, Inc. v. United States*, 12 CIT 1134, 1135-1140, 703 F.Supp. 97, 99-102 (1988); *Silver Reed America, Inc. v. United States*, 12 CIT 910, 912-915, 699 F.Supp. 291, 293-295 (1988).

⁴ See 19 C.F.R. § 358.58.

1517 (Fed. Cir. 1993). Use of cost criteria to satisfy the quantum of evidence required to establish entitlement to an adjustment is permissible. See *Smith-Corona Group v. United States*, 713 F.2d 1568, 1577 n.26 (Fed. Cir. 1983). Absent evidence that costs do not reflect value, *id.*, Commerce may presume that costs are passed on to consumers. See *American Alloys Inc., v. United States*, 30 Fed.3d 1469, 1475 (1994). Commerce however, "is not required to assume such a causal relationship." *Mantex Inc. v. United States*, 841 F.Supp. 1290, 1302 (1993).

In the administrative review of the matter at issue here,⁵ Commerce acknowledged a difference in the level of trade between plaintiff's home market and the United States by making level of trade adjustments for bad debt and indirect sales office expenses.⁶ Commerce, however, denied Böwe's additional claimed level of trade adjustments for advertising, headquarters sales, traffic shipment, legal and finance, and order entry and control expenses.⁷

Böwe contends that its sales in the U.S. were made to distributors at substantial discounts when compared with its home market sales to end users, and that the various functions which a distributor performs account for the difference in price. Commerce disallowed these other level of trade claims because Commerce did not believe the difference in price between home market and export sales to be related to level of trade differences. *Id.* In the first remand, Commerce rejected the claimed adjustments, stating:

In this instance, Böwe sells at the distributor level of trade in the United States and at the end-user level of trade in the home market, but has no distributor level in the home market. Böwe has not provided an adequate explanation as to why the claimed expenses would not be incurred if it did sell to distributors in the home market. Rather, they merely attempt to quantify the alleged differences between level of trade.

Remand Determination dated August 5, 1993 in *Böwe Passat Reinigungs-und Waschereitechnik GmbH, et al. v. United States*, 17 CIT 335 (1993), at 5 (emphasis added)[hereinafter "*Remand I*"]. Commerce also denied the adjustments because Böwe relied on estimations in calculating the claimed adjustments.⁸

The reasons supporting the denial were similar to those addressed by the court in *American Permac, Inc. v. United States*, 12 CIT 1134, 1135-1140, 703 F.Supp. 97, 99-102 (1988). See *Böwe Passat Reinigungs-und Waschereitechnik GmbH, et al. v. United States*, 926 F.Supp. 1138,

⁵ See Drycleaning Machinery from Germany, 56 Fed. Reg. 66,838 (Dep't Comm. Dec. 26, 1991) (final results admin. review).

⁶ Drycleaning Machinery From Germany, 56 Fed. Reg. 38,112, 38,113 (Dep't Comm. Aug. 12 1991) (prelim. results admin. review).

⁷ Order entry and control is a translation of the German name given to the department in the home market which handles and processes customer orders. Böwe explained in its questionnaire response that the processing of home market orders is more complicated than the processing of export orders and therefore places a greater burden on its office workers. Böwe's compendium data indicated that its order entry and control employees devoted a much larger portion of their activities to sales in the home market than to sales in the United States. Compendium at 6-23.

⁸ Böwe did not have sales to distributors in the home market and used certain estimated percentages that Böwe believed reflected the difference in price attributable to the difference in the level of trade.

1141-1144 (CIT 1996). Based on these similarities, and after reviewing the record evidence and the first remand determination, the Court was concerned that Commerce had, as in *American Permac*, imposed an unreasonable burden of proof on the plaintiff. *Id.* The Court found Commerce's insistence on hard numbers rather than estimates to be unreasonable. *Id.*

In the second remand, Commerce stated that certain "gaps and inconsistencies" in Böwe's data prevented the Department from making the claimed adjustments. Commerce stated:

The crux of this issue, then is not that Böwe did not provide actual data relating to Böwe's home market sales at different levels of trade (such data do not exist) but, rather, that Böwe's claims for a level of trade adjustment suffer from gaps and inconsistencies which prevent the Department from relying on these data as the basis for making an adjustment to Foreign Market Value. In sum, the evidence provided to the Department with respect to the alleged differences in selling functions and their attendant expenses is both inconsistent and incomplete.

Redetermination dated July 24, 1996 in *Böwe Passat Reinigungs-und Waschereitechnik GmbH v. United States*, 926 F.Supp. 1138 (1996)[hereinafter "*Remand II*"].

Commerce emphasized in its second remand determination that it denied the level of trade adjustments because the "gaps and inconsistencies" in Böwe's data prevented the adjustments, not because Böwe failed to supply data of home market sales to distributors or because Böwe relied on estimations. *Id.* This reasoning cures the otherwise unreasonable burden of proof and leaves only the question of whether there is substantial evidence to support Commerce's conclusion that "gaps and inconsistencies" in Böwe's data precluded the level of trade adjustments.⁹

Böwe contends that absent verification, see 19 U.S.C. § 1677e (1988), Commerce cannot attack the bona fides of its data, and that accordingly, Commerce must either accept Böwe's data with its concomitant estimations or Commerce must make its own estimations. In short, Böwe contends that Commerce cannot, absent verification, deny the level of trade adjustments on the basis that Böwe's data is unreliable. The Court disagrees. Although Böwe's data stands uncontradicted on the record, Commerce need not conduct verification to conclude that the data is too unreliable to support the claimed adjustments. See generally, *White Glove Building Maintenance, Inc. v. Brennan*, 518 F.2d 1271 (9th Cir. 1975)(holding that an agency factfinder may disregard uncontradicted testimony of a witness providing reasons for rejection are sufficiently

⁹ In its brief, defendant argues that plaintiff failed to exhaust its administrative remedies by failing to file substantive comments on Commerce's draft remand redetermination. The Court is unpersuaded that this represents an "appropriate," see 28 U.S.C. § 2637(d), scenario to require exhaustion, particularly given that the government's delay in issuing the draft prompted plaintiff to file its substantive comments directly with the Court, in accord with the time periods set forth in the Court's earlier order. Additionally, this case has been remanded more than once on the issue of level of trade adjustments and Commerce's position has not changed; therefore, the Court believes that at this stage of the litigation, any comments by plaintiff would have been futile. Finally, Commerce will have an opportunity to analyze plaintiff's arguments on remand.

explained). If Commerce offers adequate reasons that are sufficiently explained, Commerce may reach a contrary conclusion to that urged by the party submitting the data. *Id.* Commerce is not constrained by the inferences Böwe makes from its own data; Commerce may, based on its experience in administering the statute and regulations, make justifiable inferences on the record before it. *See Radio Officers v. NLRB*, 347 U.S. 17, 48-51 (1953); *see also Matsushita Elec. Industrial Co., v. United States*, 3 Fed. Cir. (T) 44, 51, 750 F.2d 927, 933 (reviewing whether "the evidence and reasonable inferences from the record support the [ITA] finding.") (emphasis added). The inference in issue here is that gaps and inconsistencies in the data completely undermine the claimed adjustments.

ADVERTISING

The specific inconsistency Commerce identified for Böwe's advertising adjustment involved statements made by Böwe in its case brief and at the Public Hearing. *Remand II* at 10. Böwe stated in its Case Brief, "[d]ue to the nature of the dry cleaning industry, all advertising is directed towards distributors and end users. In all markets, all customers, whether distributors or end users, read the same trade journals and go to the same exhibitions and trade fairs." Case Brief at 10. Similar statements were made at the public hearing, emphasizing that Böwe's advertising in each market is directed at the entire dry cleaning industry, including manufacturers, distributors, and end users of every type. "Transcript of Proceedings," dated October 30, 1991 (Hearing Transcript) at 17 and 18. Given these statements, Commerce concluded that "Böwe's advertising expenses would not differ at all were it to sell to distributors rather than end users in the home market since, under either scenario, the advertising is the same." *Remand II* at 10-11. Accordingly, Commerce stated it could not grant the requested adjustment. *Id.*

If the Court evaluated the evidence on its own, it might conclude that an adjustment of some magnitude was warranted for advertising expense, based principally on the narrative explanation provided by Böwe and the Court's belief that some of the advertising burden borne by Böwe would be shifted to distributors. The Court, however, does not function as a finder of fact in this instance, but evaluates Commerce's decisions to insure that they are supported by substantial evidence. *See* Section 516a(b)(1)(B)(i) of the Tariff Act of 1930, 19 U.S.C. § 1516a(b)(1)(B)(i). The statements Böwe made concerning its advertising indicated to Commerce that Böwe's advertising expenses would be identical, irrespective of the level of trade at which Böwe sells subject merchandise. The statements reasonably support Commerce's conclusion and the Court therefore will affirm Commerce's denial of Böwe's claimed level of trade adjustment for advertising expense.

HEADQUARTERS SALES DEPARTMENT EXPENSES (HQ SALES)

The specific inconsistency Commerce identified for Böwe's headquarters sales department adjustment involved contradictory statements

and evidence on the extent to which headquarters sales employees spent time designing dry cleaning shops for end users. *Remand II* at 15-17. Commerce considered Böwe's statement in its Questionnaire Response that "headquarters office has much more work in dealing with the regional sales office or agent than with a sister corporation in another market," and that "[***] are domestic [***] who work with the sales office and customer to lay out dry cleaning shops." *Id.* at 15-16 (quoting Questionnaire Response at B-11) (emphasis added). Commerce also considered statements made by Böwe in its Case Brief, in which Böwe repeated its assertion that its employees must spend time assisting end-user customers in designing the lay-out of their dry cleaning shops. *Id.* at 16 (citing Case Brief at 12). Commerce notes that Böwe also stated one page later in its Case Brief that "[h]eadquarters selling personnel spend most of their time coordinating sales between various customers, potential customers and agents and less time working on the specific details of individual sales." Case Brief at 13. Commerce inferred that designing the floor plan of a customer's particular dry cleaning shop was intimately tied to "the specific details of individual sales." *Remand II* at 16. This inference suggested to Commerce that Böwe's headquarters sales personnel did not spend "most of their time" designing dry cleaning shops for end users, precisely the work that Böwe claimed would not be performed for sales to distributors and that formed the basis of Böwe's narrative claim for a level of trade adjustment. *Id.*

Commerce's further analysis of Böwe's "Working Time Investigation" for the Headquarters Sales Department, contained in Böwe's October 23, 1991 Compendium, indicated that the activities listed for each employee made no mention of "installation planning" or design of a customer's dry cleaning shop, the two activities Böwe specifically said it could eliminate by selling to distributors in the home market. *Id.* at 17 (citing Compendium at 25 through 34). Given that the record evidence revealed that the headquarters sales staff did not devote most of its time to the specialized end user work forming the heart of Böwe's narrative claim for the adjustment, Commerce concluded that a level of trade adjustment was inappropriate. *Id.* Based on the record evidence, the Court must affirm this determination.

TRAFFIC AND SHIPMENT DEPARTMENT EXPENSES

Commerce explained its denial of Böwe's request for a level of trade adjustment for Traffic and Shipment Department Expenses as follows:

In its *Final Results* the Department classified Böwe's Traffic and Shipment expenses as "overhead," stating that Böwe had "failed to demonstrate that these expenses are sales expenses." *Final Results* at 66839. Our review of the record evidence in this review, including Böwe's Compendium, reaffirms that original determination.

Böwe's March 1, 1991 Questionnaire Response does not include a separate claim for a LOT (or COS) adjustment for Traffic and Shipment expenses, * * * In its Case Brief, Böwe makes no mention of a level-of-trade adjustment for Traffic and Shipment expenses. The Compendium for the first time in this review attempts to quantify a

LOT adjustment for Traffic and Shipment, and contains information similar to that submitted for the other expenses discussed above, *i.e.*, Böwe's "Working Time Investigation" of Traffic and Shipment employees' activities during one week in September 1991. While this study assists in distinguishing work devoted to the home market, as opposed to export markets, it does not further illuminate the issue raised here: whether, and if so, to what extent, differences in prices are attributable to differences in levels of trade. For example, Employee [***] activities are listed as "Freight," "Air freight, Express, Courier," "Post" and "Freight, Express, Post." Compendium at 46. Employee [***], on the other hand, was occupied entirely with preparing orders for dispatch. *Id.* at 47 and 48. Meanwhile, a four-employee team worked on packing and loading dry cleaning machinery. However, Böwe has presented no evidence on the record to support its suggestion that these expenses would vary had Böwe sold to distributors in the home market, except in its assertion that sales to distributors would necessarily involve shipments of more than one unit. *Id.* at 63. While this statement is plausible, Böwe has not explained or quantified the effect this one difference might have on traffic and shipment expenses. Rather, Böwe suggests here, with no further explanation, a LOT adjustment equal to [***] percent of its Traffic and Shipment expenses. Böwe has provided no evidence on the record, either in the form of Worksheets or narrative explanation, to substantiate this claim or to explain how it arrived at this [***] percent figure.

All evidence available on the record indicates that Traffic and Shipment Department expenses were incurred in the general course of business, and bear no relationship, whether direct or indirect, to sales of subject merchandise. Furthermore, even if these could be classified as sales expenses, Böwe has failed to substantiate its claim for a LOT adjustment for these expenses, or to adequately quantify any potential difference which would be attributable to differences in levels of trade. Accordingly, we determine that the Department's original classification of these expenses as "overhead" expenses was correct, given the evidence on the record.

Remand II at 18-20 (footnotes omitted).

Commerce has adequately explained the denial of Böwe's requested level of trade adjustment for this expense. Based on the record evidence and Commerce's analysis of the Compendium data, the Court is persuaded that the expenses for the traffic and shipment department were of a general nature, were not true sales expenses, and that Böwe's submission suffered from evidentiary gaps that precluded the adjustment.

LEGAL AND FINANCE DEPARTMENT

Commerce identified gaps in Böwe's claimed legal department adjustment and inconsistencies in Böwe's request for a finance department adjustment. *Id.* at 20-23. Böwe claimed it would avoid the legal expense of pursuing delinquent accounts by selling to distributors. Commerce concluded that Böwe's claim conflicted with commercial reality. *Id.* at 21. Commerce reasoned that customers at the distributor level are subject to cash-flow problems, as are end users, and require manufacturers

such as Böwe to take additional action to secure payment. *Id.* at 21-22. Commerce noted that Böwe simply posited its claim that legal expenses would be eliminated entirely had Böwe sold to distributors. *Id.* at 22. Commerce also noted that Böwe had failed to indicate whether the claimed adjustment for legal expenses was limited to the department's pursuit of delinquent accounts, as opposed to the department's handling of unrelated corporate legal matters. *Id.* Commerce's explanation of its dissatisfaction with the gaps in Böwe's claim persuades the Court that Commerce's denial of this adjustment was proper.

As to the finance department expenses, Commerce identified both gaps and inconsistencies in Böwe's claim, and, consequently denied the adjustment. *Id.* at 22-23. Commerce considered Böwe's claim that it would not incur expenses relating to invoicing of end-user customers if it sold to distributors. *Id.* at 22. Commerce identified a contradictory statement in Böwe's Compendium that "Böwe would invoice to distributors * * *" Compendium at 66, indicating to Commerce that Böwe would incur similar, if not identical, expenses for invoicing its distributor customers, if these existed. *Id.* According to Commerce, Böwe never explained why invoicing expenses would be reduced (or eliminated) for sales to distributors. *Id.* And the contradictory statements made by Böwe led Commerce to conclude that Böwe may have had to invoice its customers regardless of their classification. *Id.* Commerce noted another inconsistency in Böwe's claim: Böwe claimed it would not incur expenses relating to financing of installment contracts for sales to distributors. *Id.* (citing Compendium at 67, and Supplemental Response at Da8). Commerce then identified what it believed to be contradictory record evidence from Böwe's sales to distributors in the United States demonstrating that many of these distributor sales involved extended payment plans similar to those Böwe used for its home market end-user customers. *Id.* (citing Böwe's March 12, 1991 submission (U.S. sales listing)).

The Court is persuaded that Commerce's analysis of Böwe's questionnaire responses and Compendium data justify denial of a level of trade adjustment for Legal and Finance Department Expenses. Commerce was not willing to assume that sales to distributors would involve less legal and finance department work than sales to end users, and the evidence provided by Böwe did not sufficiently detail their home market end-user legal and finance expenses.

ORDER ENTRY AND CONTROL

Commerce also denied Böwe's request for a level of trade adjustment for order entry and control expenses. *Id.* at 11-15. Böwe contended that it incurred additional expenses in its sales to end users for "administration of commissions, trade-ins, special discounts and financing, special options, scheduling and paperwork as to installation, technical services, official government reporting, etc." *Id.* at 11 (quoting Questionnaire Response at B-11). Böwe further claimed that its sales force spends a disproportionate amount of time (in relation to its total sales of dry

cleaning machinery) in processing home market orders directly to end-users in the home market. *Id.* Böwe's compendium data indicated that its order entry and control employees devoted a much larger portion of their activities to sales in the home market than to sales in the United States. Compendium at 6-23.

Commerce made two statements in its redetermination that indicate to the Court that Commerce applied an unreasonable burden of proof in denying the order entry and control adjustment. In the redetermination, Commerce stated "no record evidence exists indicating whether this employee would spend any less time processing orders and technical modifications for sales to domestic distributors." *Remand II* at 14-15. Commerce also stated that "[the Compendium] data provide no information whatsoever relating to differences in OE&C expenses which are attributable to sales at a different level of trade." *Id.* at 13. The Court reads these statements as effectively requiring actual home market distributor sales data from Böwe. The most Böwe can do for the claimed expense is to demonstrate that sales to one level of trade in the home market are more costly than sales to the other level of trade in the United States, and to demonstrate that the cost differential is reflected in price.

Commerce made these statements in explaining that Böwe's order entry and control data suffered from certain gaps. The actual language from the remand determination reads:

A thorough examination of Böwe's "Working Time Investigation" sheds no additional light on this issue. This investigation includes, without explanation, "detailed statistics," "inquiries in connection with [****] sales," "confirmation of [****]" and other categories of activities as functions it performs for end-user sales which it could avoid by selling to distributors. Böwe makes no attempt to define these activities, let alone to suggest why these activities would be necessary in the case of sales to distributors. For example, the record indicates that Employee [****] spent a great deal of time working on "Order Processing/Technical Modification," and we can discern from the study how much of this time was spent on domestic orders. Compendium at 7. **However, no record evidence exists indicating whether this employee would spend any less time processing orders and technical modifications for sales to domestic distributors.** Furthermore, such normal business practices as "order processing," "filing letters," "statistics," and "sundry work" (all listed in the "Working Time Investigation") would still be necessary if Böwe decided to make its home market sales to distributors. *Id.* at 7 through 9. **Böwe has presented no information to indicate that these functions would differ for distributor sales.**

Id. at 14-15 (emphasis added).

Commerce notes that Böwe's Questionnaire Response, Supplemental Response, and Compendium detail the labor expended on home market sales functions; Commerce, however, also opines that Böwe has not produced evidence of non-existent sales to distributors. *Id.* at 14-15.

"[N]o record evidence exists" because no evidence exists at all. Böwe apparently did all it could do to identify the costs of the order and control department and to estimate what portions of those costs would be shifted to distributors in the event sales were made to distributors.

Similarly, in the redetermination, Commerce lists expenses for trade-ins and financing of installment sales as categories for which Böwe has "provided no evidence * * * that it would not incur expenses * * * if it sold to distributors." *Id.* at 15. That evidence does not exist. Böwe's claims are based on the premise that if Böwe sold to distributors, the distributors would be responsible for any trade-ins, chattel mortgage arrangements, etc.

In effect, Commerce's redetermination imposes the same impossible burden of proof which the Court rejected in its earlier decision. *See Böwe Passat Reinigungs-und Waschereitechnik GmbH, et al. v. United States*, 926 F.Supp. 1138, 1141-1144 (1996). By requiring Böwe to produce evidence of non-existent sales to distributors, Commerce is requiring proof of sales when there are none. This unreasonable burden of proof cannot be sustained. *See NEC Home Elecs. v. United States*, 54 F.3d 736, 745 (1995); *American Permac, Inc. v. United States*, 12 CIT 1134, 1135-1140, 703 F.Supp. 97, 99-102 (1988); *Silver Reed America, Inc. v. United States*, 12 CIT 910, 915, 699 F.Supp. 291, 295 (1988).

Apart from the application of an unreasonable burden of proof, Commerce attempted to identify inconsistencies in Böwe's claim for the order entry and control adjustment. *Remand II* at 13. After careful consideration of Commerce's explanation of the identified inconsistency, the Court does not believe that it directly undermines Böwe's order entry and control claim. Commerce explained the inconsistency as follows:

Böwe claims that a price differential arises due to discounts which would be granted on sales to distributors which, Böwe argues, it presently does not grant to end users. Questionnaire Response at A-3. We note, however, that all end-user customers in the home market are entitled to early-payment discounts and "various types of price reductions," and, further, according to Böwe, that home market prices "[* * *]." Questionnaire Response at A-2. In other words, Böwe grants discounts as a matter of course at both levels of trade. Likewise, Böwe claims that it would not incur commission expenses if its home market sales were to distributors. Supplemental Response at D-3. However, the only record evidence the Department has concerning sales of subject merchandise to distributors is that concerning Böwe's own sales to distributors in the United States, which indicates that Böwe did, in fact, incur commission expenses on every sale it made to a distributor. Böwe, therefore, has failed to support its assertions that it incurs additional expenses related to discounts and commissions because it sells to end users, rather than distributors, in the home market.

Id.

Prior to this paragraph, Commerce stated that OE&C "essentially involves data entry and processing of orders." *Id.* at 11. Despite the acknowledgment that OE&C is a clerical or administrative function, Commerce, in the above-quoted paragraph, apparently confused the cost of the OE&C administrative expense with the cost of the programs or functions to which it relates; confusion evident, at page 14 of the redetermination where Commerce states that "some of the functions which Böwe suggest lead to different selling expenses due to level of trade (i.e. payment of commissions, discounts, trade-in allowances) are not activities within the purview of Order Entry & Control at all." *Id.* at 14.

Commerce has apparently confused the cost associated with administration of the discounts or commissions, with the cost of the discounts or commissions themselves. Moreover, Commerce's discussion of discounts and commissions does not identify evidence for rejecting the OE&C claim.

Commerce identified from the record that virtually all of Böwe's sales involved discounts. Böwe argues that the mere fact that they give discounts to both distributors and end users does not mean that the administration of the discount and commission programs for the different levels of trade does not entail significantly different costs (and by extension, prices). To paraphrase Böwe's argument, virtually all sales in the dry cleaning industry deviate from "list" prices because of discounts — big, uniform discounts to distributors and a variety of small, sometimes special discounts, to end users. The relevance of this to OE&C is that distributors buy in larger quantities rather than single units. Further, their discounts are single and uniform. Thus, the paperwork is less arduous, time consuming, and labor intensive than the end user discounts. End users typically buy in units of one. Their discounts may involve special arrangements. A similar situation exists respecting commissions.

Therefore, the Court believes that it is not inconsistent for Böwe to have commissions and discounts in both markets, and to have disparate administrative costs pertaining to those sales functions. This is, in fact, what the Compendium data for order entry and control demonstrate. Compendium at 6-23.

The Court directed Commerce to identify, if it could, evidence on the record justifying Commerce's refusal to accept Böwe's estimate of OE&C expenses. In response, Commerce has failed to identify gaps and inconsistencies of any consequence in this part of Böwe's claim. The inconsistencies identified by Commerce concerning discounts and commissions only tangentially concern the administration of those programs, and they do not address the claims supported by Böwe's Compendium data that the administration of home market sales involves higher labor costs than Böwe's sales to distributors in other countries. Accordingly, the Court will again remand this issue to Commerce for reconsideration of its rejection of the claimed order entry and control expense level of trade adjustment.

(Slip Op. 96-193)

FEDERAL-MOGUL CORP., PLAINTIFF AND PLAINTIFF-INTERVENOR, AND TORRINGTON CO., PLAINTIFF AND PLAINTIFF-INTERVENOR *v.* UNITED STATES, DEFENDANT SKF USA INC., SKF FRANCE S.A., SKF GMBH, SKF INDUSTRIE, S.p.A. SKF SVERIGE AB, SNR ROULEMENTS, METER S.p.A., NTN BEARING CORP OF AMERICA, AMERICAN NTN BEARING MANUFACTURING CORP., NTN CORP., NTN KUGELLAGERFABRIK (DEUTSCHLAND) GMBH, NSK LTD., NSK CORP., EMERSON POWER TRANSMISSION CORP., INA WALZLAGER SCHAEFFLER KG, INA BEARING CO., INC., KOYO SEIKO CO., LTD., KOYO CORP OF U.S.A., RHP BEARINGS, RHP BEARINGS INC., NMB SINGAPORE LTD., PELMEC INDUSTRIES (PTE.) LTD., NMB THAI LTD., PELMEC THAI LTD., FAG KUGELFISCHER GEORG SCHAFER KGAA, FAG ITALIA, S.p.A., FAG (U.K.) LTD., BARDEN CORP (U.K.) LTD., FAG BEARINGS CORP. AND BARDEN CORP., DEFENDANT-INTERVENORS

Consolidated Court No. 93-08-00461

Plaintiff and plaintiff-intervenor, The Torrington Company ("Torrington"), alleges that Commerce erred in: (1) allowing NTN's interest expenses on estimated duty deposits as an offset against actual U.S. selling expenses; and (2) determining that NMB Thai Ltd., Pelmec Thai Ltd. and NMB Corporation's ("NMB/Pelmec") Route B sales should be treated as home market sales.

Defendant-intervenor, SKF USA Inc., SKF France S.A., SKF GmbH, SKF Industrie, S.p.A. and SKF Sverige AB (collectively "SKF"), contend that Commerce erred in making changes to the Final Results that were not at issue in this remand and, as a result, improperly disallowed certain SKF rebates and an SKF Italy cash discount.

Defendant-intervenor, NTN Bearing Corporation of America, American NTN Bearing Manufacturing Corp., NTN Corporation and NTN Kugellagerfabrik (Deutschland) GmbH (collectively "NTN"), argue that Commerce erred in: (1) improperly recalculating NTN's inventory carrying costs; and (2) failing to treat aftermarket as a different level of trade by not recognizing that NTN incurred different selling expenses at different levels of trade.

Held: The Court finds that Commerce properly: (1) allowed NTN's interest expenses on estimated duty deposits as an offset against actual U.S. selling expenses; (2) determined that NMB/Pelmec's Route B sales should be treated as home market sales; (3) disallowed certain SKF rebates and an SKF Italy cash discount; and (4) recalculated NTN's inventory carrying costs. Further, upon reconsideration, pursuant to Commerce's *Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order*, 58 Fed. Reg. 39,729, 39,767 (1993), Commerce is to treat aftermarket as a distinct level of trade for NTN sales.

[Judgment for defendant; case dismissed.]

(Dated December 12, 1996)

Stewart and Stewart (Terence P. Stewart, James R. Cannon, Jr., Wesley K. Caine, William A. Fennell, Geert de Prest, John M. Breen, Lane S. Hurewitz, Myron A. Brilliant, Patrick J. McDonough and Amy S. Dwyer) for plaintiff and plaintiff-intervenor The Torrington Company.

Frank W. Hunger, Assistant Attorney General; David M. Cohen, Director, Commercial Litigation Branch, Civil Division, U.S. Department of Justice (Jeffrey M. Telep); of counsel: Michelle Behaylo, Stacy J. Ettinger, Thomas H. Fine, Anna Park, Alexandra Levinson and David Ross) for defendant.

Howrey & Simon (Herbert C. Shelley, Alice A. Kipel, Anne Talbot and Patricia M. Steele) for defendant-intervenor SKF USA Inc., SKF France S.A., SKF GmbH, SKF Industrie, S.p.A. and SKF Sverige AB.

Barnes, Richardson & Colburn (Donald J. Unger, Kazumune v. Kano and Lawrence M. Friedman) for defendant-intervenors NTN Bearing Corporation of America, American NTN Bearing Manufacturing Corp., NTN Corporation and NTN Kugellagerfabrik (Deutschland) GmbH.

Powell, Goldstein, Frazer & Murphy (Peter O. Suchman, Neil R. Ellis, Robert A. Calaff and Susan M. Mathews) for defendant-intervenors Koyo Seiko Co., Ltd. and Koyo Corporation of U.S.A.

White & Case (Walter J. Spak, William J. Clinton, David E. Bond and Edmund W. Sim) for defendant-intervenors NMB Singapore Ltd., Pelmec Industries (Pte.) Ltd., NMB Thai Ltd. and Pelmec Thai Ltd.

OPINION

TSOUICALAS, Senior Judge: On February 13, 1996, this Court, in *Federal-Mogul Corp. v. United States*, 20 CIT ___, 918 F. Supp. 386 (1996), remanded the Department of Commerce, International Trade Administration's ("Commerce") final determination concerning the third administrative review of the antidumping duty order covering antifriction bearings ("AFBs"), entitled *Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order*, 58 Fed. Reg. 39,729 (1993), as amended, *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom; Amendment to Final Results of Antidumping Duty Administrative Reviews*, 58 Fed. Reg. 42,288 (1993); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France and the United Kingdom; Amendment to the Final Results of Antidumping Duty Administrative Reviews*, 58 Fed. Reg. 51,055 (1993); and *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Japan; Amendment to Final Results of Antidumping Duty Administrative Reviews*, 59 Fed. Reg. 9,469 (1994) (collectively "Final Results"). The Final Results covered the period May 1, 1991 through April 30, 1992. *Final Results*, 58 Fed. Reg. at 39,730.

On August 21, 1996, Commerce released draft remand results and invited the parties to comment. On September 20, 1996, upon receiving comments from several parties on the draft remand results, Commerce filed its *Results on Redetermination Pursuant to Court Remand ("Remand Results")*. As the Remand Results affect seventeen of the reviewed companies, see *Remand Results* at 1, several parties have submitted comments and rebuttals.

Plaintiff and plaintiff-intervenor, The Torrington Company ("Torrington"), alleges that Commerce erred in: (1) allowing NTN Bearing Corporation of America, American NTN Bearing Manufacturing Corp., NTN Corporation and NTN Kugellagerfabrik (Deutschland) GmbH's (collectively "NTN") interest expenses on estimated duty deposits as an offset against actual U.S. selling expenses; and (2) determining that NMB Thai Ltd., Pelmec Thai Ltd. and NMB Corporation's ("NMB/Pelmec") Route B sales should be treated as home market sales. *Torrington's Comments on the Remand Results ("Torrington's Comments")*.

Defendant-intervenors, SKF USA Inc., SKF France S.A., SKF GmbH, SKF Industrie, S.p.A. and SKF Sverige AB (collectively "SKF"), con-

tend that Commerce erred in making changes to the Final Results that were not at issue in this remand and, as a result, improperly disallowed certain SKF rebates and an SKF Italy cash discount. *Comments of SKF Regarding Final Results of Redetermination* ("SKF's Comments").

Defendant-intervenor, NTN, argues that Commerce erred in: (1) improperly recalculating NTN's inventory carrying costs; and (2) failing to treat aftermarket as a different level of trade by not recognizing that NTN incurred different selling expenses at different levels of trade. *NTN's Comments on the Department of Commerce's Remand Results* ("NTN's Comments").

1. NTN's Downward Adjustments for Indirect Interest Expenses:

The Final Results allowed NTN's downward adjustment to total U.S. indirect selling expense for interest expenses on antidumping duty cash deposits. *See Final Results*, 58 Fed. Reg. at 39,749. This Court directed Commerce, upon remand, to reconsider its decision to accept NTN's downward adjustment. *Federal-Mogul*, 20 CIT at ___, 918 F. Supp. at 412-13.

After reconsideration, Commerce determined that it properly allowed the downward adjustment. *Remand Results* at 26-29. Commerce likened the loan interest expenses at issue to legal fees, emphasizing that the expenses were incurred solely because of the antidumping duty orders, and so, could not be categorized as selling expenses. *Id.* at 26-27 (citing *Daewoo Elecs. Co. v. United States*, 13 CIT 253, 270, 712 F. Supp. 931, 947 (1989)).

Torrington claims that the interest expenses at issue are selling expenses because they are incurred due to NTN's decision to sell the subject merchandise at less than fair value. *Torrington's Comments* at 6. Further, Torrington asserts that the adjustment for NTN's interest duplicates the interest paid on refund of excess cash deposits under 19 U.S.C. §§ 1673f(b) and 1677g (1988) and creates a windfall for the importer.¹ *Id.* at 4-5.

This Court finds Torrington's arguments unpersuasive and is satisfied with Commerce's explanation for accepting NTN's downward adjustment to its U.S. indirect selling expenses. First, there is no support for Torrington's assertion that any expense related to antidumping proceedings is automatically a selling expense related to the sale of the subject merchandise. Indeed, pursuant to the rationale of *Daewoo*, such expenses are not necessarily selling expenses. In *Daewoo*, the court held

¹ Torrington also argues that Commerce improperly imputed the interest expense by applying NTN's average borrowing rate to the verified amount of NTN's net cash deposits and then using the imputed number to offset NTN's total interest expenses. *Torrington's Comments* at 2-3. Torrington contends that Commerce improperly reduced the amount of interest expenses without assurance that NTN actually incurred cash deposit costs. *Id.* at 3-4 (citing *Federal-Mogul v. United States*, 17 CIT 1249, 1264-65, 839 F. Supp. 881, 885-86 (1993), *vacated*, 19 CIT ___, 907 F. Supp. 432 (1995)).

Torrington's reliance on *Federal-Mogul* is misplaced. First, the Court in that case did not hold that Commerce may never adjust actual selling expenses by an amount of imputed expenses. Further, because Commerce often lacks evidence that actual cash deposit interest expenses were actually incurred (i.e., they are not recorded in the company financial records), Commerce must resort at times to imputed expenses. Commerce has a well-established practice of recognizing and adjusting for imputed expenses. *See, e.g., Portable Electric Typewriters From Japan; Final Results of Antidumping Duty Administrative Review*, 53 Fed. Reg. 40,926, 40,937 (1988) (noting that deductions for imputed costs have been upheld).

that legal expenses related to antidumping duty proceedings are not selling expenses.² Similarly, the interest expenses in this case do not qualify as selling expenses, as they are not related to the sale of merchandise, but to NTN's participation in the antidumping proceeding.

Further, Torrington's suggestion that the NTN interest adjustment is duplicative of that allowed under the statute is incorrect. The statutory sections at issue compensate an importer for the amount of cash deposit Commerce determines was never actually owed. See 19 U.S.C. §§ 1673f(b) & 1677g. In contrast, the adjustment to NTN's indirect selling expense reflects an actual expense to NTN that should not be included among NTN's selling expenses.³

Consequently, the Court sustains Commerce's determination that the interest NTN paid for antidumping duty deposits is not a selling expense and, thus, should be excluded from NTN's U.S. indirect selling expenses.

2. NMB/Pelmec's Route B Sales as Home Market Sales:

In the original less than fair value ("LTFV") investigation, Commerce excluded NMB/Pelmec's Route B sales⁴ from its home market database, concluding that they were export sales. See *Final Determination of Sales at Less Than Fair Value: Ball Bearings and Parts Thereof From Thailand*, 54 Fed. Reg. 19,117, 19,118-19 (1989). However, Commerce concluded in its Final Results that Route B sales should not be excluded because they are home market (Thailand) sales. See *Final Results*, 58 Fed. Reg. at 39,782-83. The Court remanded this issue for Commerce to explain why it changed its findings.

Commerce explained upon remand that the Route B sales at issue are identical to the Route B sales in the second review. In the second review, Commerce concluded that Route B sales were home market sales. The Court upheld this treatment, stating that "the location of the [first unrelated] sale transaction has a significant bearing on how a sale is classified * * *." *Torrington Co. v. United States*, 20 CIT ___, ___, 926 F. Supp. 1151, 1161 (1996). In this case, NMB/Pelmec's first Route B sales to unrelated customers were made to customers in Thailand and NMB/Pelmec knew that the Route B sales shipped through Singapore were ultimately destined for delivery and consumption in Thailand. *Remand*

² Torrington contends that *Daewoo* is distinguishable because the interest expense deductions at issue are not comparable to legal fee deductions, which are permitted to prevent frivolous lawsuits that would inflate expenses, hence increasing dumping margins. *Id.* at 5-6. However, while the *Daewoo* court stated its concern over frivolous litigation, it indicated that this concern was not the sole basis for its decision to allow an exclusion of legal fees from U.S. indirect selling expenses. *Daewoo*, 13 CIT at 270, 712 F. Supp. at 947. The court stated: "[1] [it was] satisfied with Commerce's explanation that legal fees do not qualify as selling expenses, and [2] that it would also be against public policy to make an adjustment [because] * * * [it] might encourage frivolous claims." *Id.* (emphasis added).

³ Torrington argues that Commerce's policy improperly promotes the absorption of antidumping duties, rather than the adjustment of prices. *Torrington's Comments* at 7. There is no statutory support for Torrington's assertion that Commerce should deduct indirect expenses that are not selling expenses. Indeed, 19 U.S.C. § 1677a(e)(2) (1988) explicitly limits the deduction to selling expenses.

⁴ Route B sales involve merchandise that is exported from Thailand to NMB/Pelmec's Singapore affiliate, which then returns the merchandise to Thailand for delivery to an unrelated customer. *Federal-Mogul*, 20 CIT at ___, 918 F. Supp. at 417. Such sales are home market sales and occur because Thai law permits NMB/Pelmec to sell annually only a limited number of pieces directly to customers in Thailand. *Id.*

Results at 35. Consequently, Commerce included the Route B sales at issue in the home market database.

The LTFV investigation, however, presented circumstances that required Commerce to exclude Route B sales. *Remand Results* at 34-35. Commerce concluded that the first unrelated transaction with respect to the merchandise NMB/Pelmec classified as Route B sales occurred in Singapore. *Id.* at 34. NMB/Pelmec's Singapore affiliate sold the merchandise to an unrelated customer in Singapore who then sold the merchandise to its affiliate in Thailand. *Id.* Consequently, because of the unusual circumstances under which the merchandise entered Singapore's commerce, Commerce considered the sales as third country sales and excluded them from NMB/Pelmec's home market database. *Id.* at 35.

Torrington contends that Commerce failed to sufficiently explain why it changed its finding with respect to Route B sales and that the Remand Results failed to adequately cite to the administrative record. *Torrington's Comments* at 8-10.

The Court finds Commerce's explanation on remand reasonable and fully supported by the administrative record. Unlike the transaction at issue in the LTFV investigation, the Route B sales here never entered the commerce of Singapore, and so, are home market sales. Indeed, as NMB/Pelmec points out, record evidence shows that all Route B sales in this investigation were made to customers in Thailand. *Rebuttal Comment of NMB/Pelmec to Torrington's Comments on the Remand Results* at 6 (citing *Response of NMB/Pelmec Thai to Section A of the Questionnaire*, P.R. Document No. 20, Fiche 2, Frame 18). Hence, in accordance with *Torrington*, 20 CIT at ___, 926 F. Supp. at 1162, the Court sustains Commerce's decision to include the Route B sales at issue in the home market analysis.

3. Certain SKF Cash Discounts and Billing Adjustments:

In the Final Results, Commerce allowed certain post-sale price adjustment allocations as indirect selling expenses for several companies. Among the adjustments that Commerce allowed were the post-sale billing adjustments that SKF-Germany, SKF-Sweden and SKF-Italy granted to their customers. *Final Results*, 58 Fed. Reg. at 39,760. This Court instructed Commerce, upon remand, to develop a methodology that removes discounts paid on sales of out-of-scope merchandise from any adjustments made to foreign market value for post-sale price adjustments or, if no viable methodology could be developed, to deny such an adjustment in the calculation of each company's foreign market value. *Federal-Mogul*, 20 CIT at ___, 918 F. Supp. at 408.

Commerce found, upon remand, that the SKF companies did not record their billing adjustments on a transaction-specific basis but, rather, in a single account allocating them to both subject and non-subject merchandise. *Remand Results* at 22. Hence, Commerce denied the adjustments. *Id.* Commerce notes that it interpreted the remand instructions in accordance with *Torrington Co. v. United States*, 82 F.3d 1039,

1047-51 (Fed. Cir. 1996), which held that Commerce should disallow all billing adjustments where adjustments on non-scope merchandise could not be removed from the reported amounts. *Id.* at 23. Torrington agrees that Commerce correctly denied the post-sale price adjustments. See *Torrington's Rebuttal* at 1-6.

SKF argues that Commerce improperly disallowed certain SKF cash discounts and billing adjustments that were not challenged by Torrington and were not expressly included in the scope of Commerce's remand.⁵ *SKF's Comments* at 3-19.

The Court finds Commerce's exclusion of all billing adjustments where adjustments on non-scope merchandise could not be removed from the reported amounts reasonable and in accordance with law. Commerce did not exceed the scope of the remand order, which broadly encompassed all post-sale price adjustments and rebates. See *Federal-Mogul*, 20 CIT at ___, ___, 918 F. Supp. at 408, 421. Hence, pursuant to *Torrington*, 82 F.3d at 1047-51, Commerce properly excluded the post-sale price adjustments. Consequently, Commerce's decision to exclude all post-sale price adjustments in this case is sustained.

4. Recalculation of Inventory Carrying Costs:

This Court granted Commerce's request for a remand to reconsider its methodology for computing inventory carrying costs. See *Federal-Mogul*, 20 CIT at ___, 918 F. Supp. at 399.

Commerce concluded upon remand that the inventory carrying cost formula used by NTN was not reasonable and recalculated the inventory carrying costs for NTN. See *Remand Results* at 14-15. In particular, Commerce found that NTN's methodology dramatically overstated its home market inventory carrying costs because such costs were incorrectly based on inventory values without consideration of inventory turnover rates. *Id.* at 14-15. Hence, Commerce recalculated NTN's inventory factor by taking into account NTN's reported inventory turnover rate. *Id.* at 15. Commerce further found that, because NTN's inventory values were cost-based, consistency in the carrying cost calculation required Commerce to apply the recalculated cost-based inventory factor to NTN's unit cost. *Id.* at 8-14.

NTN objects to Commerce's recalculation of NTN's inventory carrying expenses, arguing that Commerce based its recalculation on an inaccurate understanding of the methodology used by NTN. *NTN's Comments* at 1-2. NTN claims that it calculated a total amount representing the imputed inventory carrying cost, and then divided that amount by total sales to arrive at the inventory carrying cost factor. *Id.* at 2. Further, NTN argues that it did not overstate the costs at issue because the total amount allocated to sales does not change, regardless of whether it is allocated based on sales value or cost of production. *Id.*

⁵ SKF further asserts that Commerce's decision to allow SKF's rebates and cash discounts as adjustments in its Final Results became final when the time to appeal the decision expired without the issue being raised. *SKF's Comments* at 9-16. However, this Court allowed Commerce to reconsider its approach with respect to all post-sale price adjustments in light of *Torrington Co. v. United States*, 17 CIT 199, 218, 818 F. Supp. 1563, 1578-79 (1993). See *Federal-Mogul*, 20 CIT at ___, 918 F. Supp. at 408. Hence, Commerce's Final Results decision on the matter had not become final.

Upon review of the record, the Court finds that Commerce's methodology is reasonable and that Commerce properly recalculated NTN's inventory carrying costs.⁶ Consequently, Commerce's decision to recalculate NTN's inventory carrying costs is sustained.

5. Aftermarket Level of Trade:

Pursuant to its regulations, Commerce "calculate[s] foreign market value and United States price based on sales [made] at the same commercial level of trade." 19 C.F.R. § 353.58 (1994). In the Final Results, Commerce recognized three distinct commercial levels of trade for NTN: original equipment manufacturers, distributors and aftermarket customers. *Final Results*, 58 Fed. Reg. at 39,767. This Court found that Commerce prematurely recognized the aftermarket level and issued a remand for Commerce to determine whether NTN satisfied its burden of proving that there were different selling expenses between the aftermarket level and the two other levels. *Federal-Mogul*, 20 CIT at ___, 918 F. Supp. at 415.

To determine the number of a respondent's levels of trade, Commerce performs a "functional test," in which it examines the type of customers and customer functions, as reported by the respondent and subsequently verified, and arrives at an economic presumption that net prices and selling expenses are different at each level of trade. *See Laclede Steel Co. v. United States*, 18 CIT 965, 977 (1994). When a party contests the recognition of the levels of trade established by the functional test, Commerce performs a "correlation test," in which the rebutting party presents information showing that there is no correlation between prices and selling expenses, and the levels of trade. *Id.*

In *Federal-Mogul*, this Court concluded that Commerce was to examine not only NTN's price expenses, but also NTN's selling expenses before determining the discernible levels of trade that exist. 20 CIT at ___, 918 F. Supp. at 415 (citing *Import Administration Policy Bulletin 92/1*, July 29, 1992) ("Policy Bulletin"). Commerce and NTN contend that the Court misconstrued the Policy Bulletin test by requiring NTN to supply selling information when, in fact, such information is only required from a party challenging the results of the functional test. *Remand Results* at 29-33; *NTN's Comments* at 3.

Upon reconsideration, the Court notes that a proper interpretation of the Policy Bulletin mandates that NTN was not required to provide any analysis beyond the functional test unless it wished to rebut the economic presumption. The party *opposing* a level of trade classification, in this case Torrington, has the burden to provide a factual basis for rebutting the economic presumption by demonstrating that prices and selling expenses are not correlated to levels of trade. *See Laclede*, 18 CIT at 977; *see also Ad Hoc Comm. of AZ-NM-TX-FL Producers of Gray Portland*

⁶Indeed, NTN does not dispute either of Commerce's adjustments to NTN's inventory carrying costs but, rather, merely asserts that Commerce mischaracterized NTN's original calculation.

Cement v. United States, 16 CIT 1008, 1010, 808 F. Supp. 841, 844 (1992), *rev'd on other grounds*, 13 F.3d 398 (Fed. Cir. 1994).

In this case, NTN established an economic presumption under the Policy Bulletin test that an aftermarket level of trade exists and Torrington failed to provide Commerce with sufficient evidence to rebut the presumption. See *Final Results*, 58 Fed. Reg. at 39,767. Consequently, the Final Results conclusion that aftermarket is a distinct level of trade for NTN sales is sustained.

(Slip Op. 96-194)

MATTEL, INC., PLAINTIFF *v.* UNITED STATES, DEFENDANT

Court No. 92-08-00546

[Judgment for plaintiff. Plaintiff's claim for classification of toy cars as "models" granted.]

(Dated December 13, 1996)

Stein, Shostak, Shostak & O'Hara (Marjorie M. Shostak & Lawrence Shostak of counsel) for plaintiff.

Frank W. Hunger, Assistant Attorney General; *Joseph I. Liebman*, Attorney-in-Charge, International Trade Field Office, Commercial litigation Branch, Civil Division, United States Department of Justice (*Laura Siegel*, Office of Assistant Chief Counsel, International Trade Litigation, United States Customs Service, of counsel) for defendant.

DECISION AND JUDGMENT

WATSON, Senior Judge: This test case involves the proper tariff classification of two doll-sized cars imported by the plaintiff Mattel, Inc. for sale as accessories with their line of Barbie dolls. The cars look like the 1957 Chevrolet Bel-Air convertible and the Ferrari GTS 328. They are large enough to hold the Barbie dolls as drivers or passengers. The Chevrolet is about two feet long. The Ferrari is about 20 inches long.

The cars were classified by the Customs Service as toys other than models without spring mechanisms, under Subheading 9503.90.60 of the Harmonized Tariff Schedules of the United States ("HTSUS"). As such they were ineligible for special duty-free treatment under the Generalized System of Preferences ("GSP"), and were assessed with duty at the rate of 6.8% *ad valorem*. Mattel claims that the cars should be classified under Subheading 9503.90.70 of the HTSUS as other models, a provision that was eligible for duty-free status under the GSP.

The statutory provisions involved in this case are as follows:

Classified Under:

9503 Other toys: reduced-size ("scale") models and similar recreational models, working or not; * * *; parts and accessories thereof;

9503.80	Other toys and models, incorporating a motor, * * *					
*	*	*	*	*	*	*
9503.90	Other:					
*	*	*	*	*	*	*
	Other:					
*	*	*	*	*	*	*
<i>Rates of Duty</i>						
<i>General Special</i>						
9503.90.60	Other toys (except models), not Having a spring mechanism	6.8%			Free (A*, * * *)	
<i>Claimed under:</i>						
9503.90.70	Other:	6.8%			Free (A, * * *)	
	Model airplanes, model boats And other models:					
107	Made to a scale of the Actual article at a ratio of 1 to 85 or smaller					
205	Other					

Prior to July of 1989 it made no difference whether Mattel imported these cars under SUBH.9503.90.60 as toys, or SUBH 9503.90.70 as models, because both provisions were duty-free under the GSP. The fact that it chose to assert its right to classification as models only after it became aware that products from Mexico were going to lose their GSP duty-free status under the provision for other toys in SUBH 9503.90.60 does not detract from plaintiff's present claim. The question before the court is simply whether or not these cars are models within the meaning of the claimed tariff provision.

In support of its classification the government relies on a number of arguments. First, as always, it raises its presumption of correctness. Then it argues that these cars were not designed to be models, lack the various qualities of models, were not sold as models, were not commercially known as models, were not used as models and are not within the meaning of the word "models" as used in the tariff schedules.

The government makes these contentions with much wit and with extensive argumentation. But it all comes down to a position that models must be highly detailed, must not be used as toys, and can, at most, be either the sort of reproductions of real vehicles that actually fly, sail, or run on the ground, or the sort of exact miniatures that are kept in display cases.

The gist of the testimony by defendants' expert witnesses was that models must be highly accurate representations of the original, possessing near perfection in proportion and detail. In addition, according to defendant's witnesses, models are not to be used as objects of play or for amusement.

By these standards, the cars in question would obviously not be models because they are used as an adjunct to playing with Barbie dolls and

they are not perfectly accurate reproductions of the original cars. Although there was some evidence that these cars have become the object of acquisition by those who collect model cars, the preponderance of the evidence was that they are used for play purposes by children.

Although defendant's witnesses were impressive, it is clear that their testimony cannot take the place of the legal precedents of this court. The testimony and evidence adduced by plaintiff was more persuasive on the whole, and more in conformity with legal precedent.

The leading opinion of this court on the subject of models is the scholarly decision by Judge Maletz in *Lohzin & Born, Inc. v. United States*, 79 Cust. Ct. 34 (1977). In that case, the Customs Service had classified certain metal sailing ships as other models under Item 737.15 of the Tariff Schedules of the United States (TSUS) as modified by TD 68-9. That classification came under a subheading which provided inter alia for "model boats and other model articles, all the foregoing whether or not toys * * *." In that case it was the plaintiff who was resisting classification as models and was urging classification as articles of tin-plate under Item 657.15 TSUS, as modified by TD 68-9. It argued that the importations were not within the common meaning of the term "model" and that the legislative history of Item 737.15 indicated that *only* toy models or models that had the potential for amusement of the type found in toys were intended to be classifiable thereunder.

The court found that the ship in question was of the Armada-type, such as those used by Columbus in his voyage across the Atlantic. The court noted that the sample was not an exact replica of a particular ship. This lack of exactness in the replication of the original form required the court to deal with plaintiff's argument that models must be exact or accurate representations of existing articles. The court found many reasons to hold that such an interpretation of the term "model" would "extremely limit the scope of the model provisions." The court specifically held that "to come within the common meaning of the term 'model', an article need not be an exact or accurate representation of something in existence; it is sufficient if it is more than a crude form of a class of articles and recognizably represents an article that existed in fact or legend." *Lohzin & Born, Inc. v. United States*, at 41. The court further pointed out that the provision in Item 737.15 for models was an *eo nomine* provision, meaning that it would include all forms of the named article unless a contrary legislative intent, judicial decision or administrative practice is shown. Citing, *C.J. Tower & Sons v. United States*, 30 Cust. Ct. 235, C.D. 1526 (1953). In addition, the court pointed out that, in adopting the tariff schedule provisions covering models, it was the legislative intention to eliminate the distinction between models that were toys and models that were not toys.

In the present case the court has before it recognizable replicas of real cars, specifically designed and manufactured to resemble those cars, done with the permission of the auto manufacturers. These are far be-

yond what could be considered crude in their appearance or manufacture.

The question for this court therefore is whether or not any alteration has taken place in the tariff law that would undo the principle that models need not be exact and can be either used for toy purposes or for non-toy purposes.

The government argues that under the HTSUS there is a line of demarcation between things which are toys and things which are models. But careful examination of the HTSUS provisions surrounding the claimed provision shows without doubt that exactitude has not been exalted and that models can be toys.

To begin with, the Customs *Harmonized System Handbook*, at page 26, discusses the concept of "scale" as follows:

In the HS, the term "scale" (as used in heading 9503) is not to be interpreted in the restrictive sense. It appears, in the HS text, in quotation marks to indicate that it is meant to reflect the common sense of the term as used in the model trade. That is, a "scale" model does not necessarily have all parts or features built to exact scale. (Emphasis added)

This is a clear acknowledgment that scale does not necessarily mean perfect exactness of proportion, even when dealing with those models that are of the type solely acquired for their appearance.

In examining the structure of the provisions governing toys starting with Subheading 9503, it becomes plain that it is possible for any of the articles covered under the various subheadings to be toys as well as models.

It is true, as defendant points out, that the phrase "whether or not toys" from TSUS Item 737.15 as been omitted from the superior heading in HTSUS 9503. But this is hardly evidence of an intention by the legislature to foreclose the possibility that models could indeed be used as toys. First and foremost, they are still subsumed withing the category of "other toys." This alone is enough to negate defendant's argument. They are also described as "working or not." This must mean that they are either intended for pure display or manipulation and simulation of use. And if the model is intended for manipulation or simulation of use, that can hardly be distinguished from play or amusement. So it is pointless to draw a strict distinction between models and the common understanding of toys. Furthermore, general consideration of the items included in the breakdown of superior heading HTSUS 9503 clearly indicates that models are considered to be a potential form of toys.

The last of these model provisions is for "other models" under Subheading 9503.90.70.205. That obviously has to refer to models other than "model airplanes, model boats, or other models, made to a scale of the actual article at a ratio of one to eighty-five or smaller." It logically includes all articles which fall within the common meaning of the term "model" that are not included in the previous subheadings. These need not be exact or accurate replicas, if they are recognizable representa-

tions of an existing original. They are models, whether or not they are used for play, alone or in conjunction with another toy. It is this last category under which these imported cars are properly classifiable.

For the reasons given above, judgment will be entered granting plaintiff's claim for classification.

ABSTRACTED CLASSIFICATION DECISIONS

DECISION NO. DATE JUDGE	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
C96/142 11/21/96 DiCarlo, J.	Algoma Steel Corp.	96-06-01424	7208.44.00CA, 7208.45.00CA, 7208.90.00CA Various rates	7326.19.00B Duty free	Motor Wheel Corp. v. United States Slip Op. 96-49, March 20, 1996 Court No. 90-10-00549	Detroit Solid steel circle blanks
C96/143 11/22/96 Corman, J.	Anco Diamond Abrasives Corp. and Diamond Abrasives Corp.	96-06-00332	520.22100 3%	520.22100 Duty free	Agreed statement of facts	New York Synthetic and Synchill (tool and drill blanks)

Index

Customs Bulletin and Decisions
Vol. 30/31, No. 52/1, January 2, 1997

U.S. Customs Service

Treasury Decisions

	T.D. No.	Page
Determining transaction value in multi-tiered transactions	96-87	7
Drawback decisions, synopses of:		
Manufacturers:		
Advanced Refractory Technologies, Inc.	96-86-A	1
Amoco Polymers, Inc.	96-86-B	1
Apollo Colors Inc.	96-86-C	2
Basis Petroleum Inc.	96-86-1	7
Ciba-Geigy Corp.	96-86-D,	2,
	E, F, G	2, 2, 2
Cyro Industries	96-86-H	3
Eastman Chemical Co.	96-86-I	3
Eastman Kodak Co.	96-86-J	3
Eltech Systems Corp.	96-86-K	3
Goodrich Co., The B.F.	96-86-L	3
Jame Fine Chemicals Inc.	96-86-M	4
Lonza, Inc.	96-86-N	4
Merrell Pharmaceuticals, Inc.	96-86-O	4
Monsanto Co.	96-86-P	4
National Inc.	96-86-Q	5
Optical Cable Corp.	96-86-R, S	5, 5
OSi Specialties, Inc.	96-86-T, U	5, 5
Rohm and Haas Co.	96-86-V, W	6, 6
Unitex Chemical Corp.	96-86-X	6
Zeneca Inc.	96-86-Y, Z	6, 6
Merchandise:		
allyl methacrylate	96-86-U	5
aminophenol, o-	96-86-I	7
azacyclonol base	96-86-O	4
azacyclonol HCl	96-86-O	4
benzene sulfonyl chloride	96-86-X	6
biotin 5	96-86-N	4
biphenol	96-86-B	1
boron carbide	96-86-A	1
couplers	96-86-J	3
cyclohexane	96-86-P	4
cyclohexanol (A)	96-86-P	4
cyclohexanol/cyclohexanone (KA)	96-86-P	4
cyclohexanone	96-86-P	4
dyes, coal tar	96-86-Q	5
dye intermediates	96-86-C	2

INDEX

Drawback decisions, synopses of—Continued:

Merchandise—Continued:	T.D. No.	Page
ethylene	96-86-L	3
fludioxonil	96-86-G	2
HEW-50 reticulated foam	96-86-K	3
methyl alcohol	96-86-V	6
methyl methacrylate	96-86-H	3
metolachlor	96-86-F	2
optical fiber	96-86-R	5
optical fibers	96-86-S	5
para-hydroxybenzoic acid (PHBA)	96-86-B	1
petroleum, crude & derivatives	96-86-1	7
pigments	96-86-Q	5
polyoxyalkylene monoalkyl ether	96-86-T	5
polyurethane foam	96-86-K	3
pro-jet fast yellow 2 stage presscake	96-86-Y	6
pro-jet magenta R.O. feed	96-86-Z	6
profenofos technical	96-86-E	2
quinacridone, crude, gamma	96-86-D	2
TH-3866 crude	96-86-W	6
rubicon red crude	96-86-D	2
terfenadone base anhydrous	96-86-O	4
3,5,6-trichlorosalicylic acid	96-86-M	4
Recordation of trade name "A.J. & W. Incorporated"	96-88	11

General Notices

	Page
Informed compliance publications	13
What every member of the trade community should know about:	
<i>Bona fide</i> sales and sales for exportation	39
Buying and selling commissions	27
Customs value	15
Fibers & yarns construction and classification under the Harmonized System	141
Marble	191
Mushrooms	209
NAFTA (the North American Free Trade Agreement for textiles and textile articles)	51
Peanuts	223
Public meeting on the meaning of "Customs Business"	237
Raw cotton: tariff classification and import quotas	184
Review of Interim List of Records required to be maintained and produced under 19 U.S.C. 1509(a)(1)(A)	239
Textile and apparel rules of origin	82

CUSTOMS RULINGS LETTERS

Tariff classification:	Page
Proposed modification:	
Briefcases and similar articles	246
Proposed revocation:	
"Hi-5" plastic hand/arm	259
Substantial transformation of leather	263
Women's pajamas	243

INDEX

U.S. Court of International Trade

Slip Opinions

	Slip Op. No.	Page
Board of Trustees <i>v.</i> United States	96-191	295
Böwe Passat Reinigungs-und Wäschereitechnik GmbH <i>v.</i> United States	96-192	299
Federal-Mogul Corp. <i>v.</i> United States	96-193	310
Jewelpak Corp. <i>v.</i> United States	96-189	275
Mattel, Inc. <i>v.</i> United States	96-194	317
Saarstahl AG <i>v.</i> United States	96-190	286

Abstracted Decisions

	Decision No.	Page
Classification	C96/142-C96/143	322



Federal Recycling Program
Printed on Recycled Paper

U.S. G.P.O. 1997-417-405-40014

THE HISTORY OF THE

STATE OF NEW YORK

FROM THE FIRST SETTLEMENT OF THE COLONY TO THE PRESENT TIME
BY
JAMES M. SMITH, LL.D.

VOLUME THE SECOND

NEW YORK: PUBLISHED BY J. B. LIPPINCOTT & CO., 15 N. 2ND ST.

